Supreme Court, U.S.
FILED
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No. 04-66 12

IN THE

Supreme Court of the United States

Abdela Tum, et al.,

Petitioners,

v.

Barber Foods, Inc., d/b/a Barber Foods,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

JOINT APPENDIX

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Petition for Certiorari filed July 8, 2004

Certiorari granted February 22, 2005

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U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:00-cv-00371-GC

Date Filed	#	Docket Text
12/12/2000	1	COMPLAINT filed; FILING FEE $ 150.00 RECEIPT # 42058; jury demand (Service of Process Deadline 4/11/01) (mmc) (Entered: 12/12/2000)
01/05/2001	2	ANSWER to Complaint by BARBER FOODS INC (Attorney GRAYDON STEVENS), (ckb) (Entered: 01/05/2001)
11/14/2001	22	STATEMENT of Material Fact by BARBER FOODS INC (mjl) (Entered: 11/14/2001)
12/05/2001	29	RESPONSE TO STATEMENT of Material Fact by ALL PLAINTIFFS re: [22-1] fact statement (mjl) (Entered: 12/06/2001)
01/23/2002	41	RECOMMENDED DECISION of MAG. JUDGE DAVID M. COHEN Re: [21-1] motion for Summary Judgment ; Motion no longer referred Objections to R and R due by 2/12/02 for ALL PLAINTIFFS, for BARBER FOODS INC ; cc:cnsl (ckb) (Entered: 01/24/2002)
02/20/2002	49	ORDER Affirming [41-1] motion RECOMMENDED DECISION of MAG. JUDGE DAVID M. COHEN Re: [21-1] motion for Summary Judgment,

		granting in part, denying in part [21-1] motion for Summary Judgment (signed by JUDGE GENE CARTER) cc: cnsl (mjl) (Entered: 02/20/2002)
04/29/2002		JURY TRIAL BEGUN before JUDGE GENE CARTER (Court Reporter: Pauline Terry) (mjl) (Entered: 04/29/2002)
05/01/2002	56	Jury Verdict for BARBER FOODS INC (cc: cnsl) (ckb) (Entered: 05/01/2002)
05/03/2002	58	JUDGMENT for BARBER FOODS INC against ALL PLAINTIFFS signed by William S. Brownell, Clerk. cc: cnsl (EOD: 5/3/02): In accordance with the parties' joint stipulation of dismissal reached during the final pretrial conference held on December 6, 2001 before Magistrate Judge David M. Cohen, judgment of dismissal is hereby entered as to plaintiffs Brad Reynolds, Scott Knox and Michael Smith. In accordance with Judge Gene Carter's Order Affirming the Recommended Decision of the Magistrate Judge on Defendant's Motion for Sanctions dated February 20, 2002 (Pleading No. 48) and Judge Gene Carter's Order Affirming the Recommended Decision of the Magistrate Judge on Defendant's Motion for Summary Judgment dated February 20, 2002 (Pleading No. 49), judgment is hereby entered in favor of Barber Foods, Inc. d/b/a Barber Foods and against Gordon Lemire, Lisa

		Morgan, Tatyana Novika, Robert Ouellette, Mark Aitkenhead, Cory Chase, Toan Dang, William Devine, Angela Dumont, Mohammed Habibzai, Peter Hamilton, Diane Keraghan, Lee LeCroix, Gladstone Lewis and Kyra Perdue. This action came on for trial before the Court and a jury, Honorable Gene Carter, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict, judgment is hereby entered in favor of Barber Foods, Inc. d/b/a Barber Foods and against Nicholas Bearce, Allison Carey, Celso Florendo, Letecheal Hailu, Robert Huntley, Ken LeMarche, Ernest Levesque, Natalie Luongo, Paul Mason, Derso Mekonen, The Ngo, Tadeusz Olsyzynski, Joseph Raymond, Doug Robito, Najib Sayed, Laurie Secord, Kevin Snow, Evelyn Theunissen, Abdela Tum, Heidi Wallace and Mintwab Yimam. (ckb) (Entered: 05/03/2002)
05/31/2002	59	NOTICE OF APPEAL by ALL PLAINTIFFS FILING FEE $ 105 RECEIPT # 45653 re: 48, 49, 58 (bfa) (Entered: 05/31/2002)

General Docket
US Court of Appeals for the First Circuit

Court of Appeals Docket #: 02-1679 Filed: 6/10/02

ABDELA TUM; NAJIB SAYED; CELSO FLORENDO; TADEUSZ OLSZYNSKI; NICHOLAS BEARCE; ALLISON CAREY; LETECHEAL HAILU; ALBERT HOWARD; ROBERT HUNTLEY; KEN LAMARCHE; ERNEST LEVESQUE; NATALIE (LUONGO) LEYLAND; PAUL MASON; DERSO MEKONEN; THE HUU NGO; JOSEPH RAYMOND; ROBERT RUBIN; DOUG RUBITO; LAURIE SECORD; KEVIN SNOW; EVELYN THEUNISSEN; HEIDI WALLACE; MINTWAB YIMAM; MARK AITKENHEAD; SHAUN ALBAIR; ERLINDA CARTER; SANDRA CHADBOURNE; CORY CHASE; TOAN DANG; WILLIAM DEVINE; ANGELA DUMONT; MOHAMMED HABIBZAI; PETER D. HAMILTON; DIANE KERAGHAN; LEE LACROIX; GORDON LEMIRE; LISA MORGAN; TATYANA NOVIKOVA; ROBERT OUELLETTE; BELETU A. SMITH; TIMOTHY C. SMITH; KYRA L. PARDUE; BRADFORD D. REYNOLDS; SCOTT KNOX; MICHAEL F. SMITH; GLADSTONE LEWIS,

Plaintiffs - Appellants/Cross - Appellees,

v.

BARBER FOODS INC., d/b/a Barber Foods,

Defendant - Appellee/Cross - Appellant.

1/10/03	CASE ARGUED 01/10/03. Boudin, Ch. J., Torruella, Lynch, JJ. (ceca) [02-1679 02-1739]
6/3/03	OPINION filed by Chief Judge Michael Boudin, Judge Juan R. Torruella and Judge Sandra L. Lynch, signed by Judge Juan R. Torruella, PUBLISHED. [02-1679, 02-1739] (darl) [02-1679 02-1739]
6/3/03	JUDGMENT filed by Chief Judge Michael Boudin, Judge Juan R. Torruella and Judge Sandra L. Lynch, closing case. The judgement of the district court is affirmed. [02-1679, 02-1739] (darl) [02-1679 02-1739]
6/17/03	PETITION FOR PANEL REHEARING AND REHEARING ENBANC filed by Appellants Abdela Tum, et al. Certificate of Service dated 6/16/03. [02-1679, 02-1739] (darl) [02-1679 02-1739]
6/17/03	BRIEF filed by Amicus Curiae U.S. Department of Labor in support of Apellant's Abdela Tum, et al, petition for panel rehearing and rehearing en banc. Length: 15 pages, Copies:8, delivered by mail. Certificate of service date 6/17/03. [02-1679, 02-1739] (darl) [02-1679 02-1739]
8/18/03	ORDER filed by Chief Judge Michael Boudin. The Secretary of Labor is requested to supplement its amicus brief by stating briefly its position on the following issues, including its basis for its positions: 1. Assuming arguendo that (as the Secretary contends) the donning and doffing of required

clothes is ordinarily integral to a principal activity, does such donning and doffing start and end the workday where the donning and doffing is itself de minimus; 2. On the same arguendo assumption that donning and doffing is part of a principal activity-- is waiting in line to obtain the initial required clothes part of the principal activity; 3. Assuming that in some situations doffing and donning is covered by the statute (e.g., required clothes) and in other situations not (e.g., non-required clothes), how does the Secretary propose that the employer calculate hours covered by the statute where, as appears to be so in this case, employees may vary individually, and from day to day, in the order in which they stand in line for required or non-required clothes and walk between different points before actually "punching in" and in which the time spent on such activities itself varies from one day to the next. The Secretary is requested to file its response, which may be in memorandum form with an original and six copies, within 21 days of the date of this order and to serve one copy on counsel for other parties. Such other parties may respond with memoranda of their own within 14 days of the date of service of the Secretary's memorandum. (darl) [02-1679 02-1739]

9/15/03 SUPPLEMENTAL BRIEF filed by Amicus Curiae U.S. Department of Labor. Length: 24 pages, Copies: 7, delivered by mail. Certificate of service date 9/15/03. [02-1679] (darl) [02-1679]

3/10/04	CASE Reopened. [02-1679, 02-1739] (frnk) [02-1679 02-1739]
3/10/04	OPINION filed. Chief Judge Michael Boudin, Judge Juan R. Torruella and Judge Sandra L. Lynch. Signed Judge Juan R. Torruella, Authoring Judge. PUBLISHED. [846138-1] [02-1679, 02-1739] (frnk) [02-1679 02-1739]
3/10/04	JUDGMENT entered by Chief Judge Michael Boudin, Judge Juan R. Torruella and Judge Sandra L. Lynch. The time within which a petition for panel rehearing or suggestion for rehearing en banc must be submitted is extended to March 23, 2004. In accordance with our practice, it is not contemplated that mandate will issue unless circumstances arise which warrant such action. [846140-1] [02-1679, 02-1739] (frnk) [02-1679 02-1739]

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, *et al.*,	)
Plaintiffs	)
	)
v.	) CIVIL NO. 00-371-P-C
	)
BARBER FOODS, INC. d/b/a	) Entered on Docket on:
Barber Foods	) 5-3-02

JUDGMENT

In accordance with the parties' joint stipulation of dismissal reached during the final pretrial conference held on December 6, 2001 before Magistrate Judge David M. Cohen, judgment of dismissal is hereby entered as to plaintiffs Brad Reynolds, Scott Knox and Michael Smith.

In accordance with Judge Gene Carter's Order Affirming the Recommended Decision of the Magistrate Judge on Defendant's Motion for Sanctions dated February 20, 2002 (Pleading No. 48) and Judge Gene Carter's Order Affirming the Recommended Decision of the Magistrate Judge on Defendant's Motion for Summary Judgment dated February 20, 2002 (Pleading No. 49), judgment is hereby entered in favor of Barber Foods, Inc. d/b/a Barber Foods and against Gordon Lemire, Lisa Morgan, Tatyana Novika, Robert Ouellette, Mark Aitkenhead, Cory Chase, Toan Dang, William Devine, Angela Dumont, Mohammed Habibzai, Peter Hamilton, Diane Keraghan, Lee LeCroix, Gladstone Lewis and Kyra Perdue.

This action came on for trial before the Court and a jury, Honorable Gene Carter, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict, judgment is hereby entered in favor of Barber Foods, Inc. d/b/a Barber Foods and against Nicholas

Bearce, Allison Carey, Celso Florendo, Letecheal Hailu, Robert Huntley, Ken LeMarche, Ernest Levesque, Natalie Luongo, Paul Mason, Derso Mekonen, The Ngo, Tadeusz Olsyzynski, Joseph Raymond, Doug Robito, Najib Sayed, Laurie Secord, Kevin Snow, Evelyn Theunissen, Abdela Tum, Heidi Wallace and Mintwab Yimam.

WILLIAM S. BROWNELL
Clerk

By: _____
Christa K. Berry
Deputy Clerk

Dated May 3, 2002.

**Handwriting omitted*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM,	)
	)
NAJIB SAYED,	) **Case No._____**
	)
CELSO FLORENDO,	)
	)
and	) **COLLECTIVE ACTION**
	) **COMPLAINT**
TADEUSZ OLSZYNSKI,	) **FOR VIOLATIONS**
	) **OF FEDERAL**
on behalf of themselves and	) **WAGE-AND-HOUR**
	) **LAW**
all others similarly situated,	)
	)
Plaintiffs,	)
	) **AND DEMAND FOR**
vs.	) **JURY TRIAL**
	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
	)
Defendant.	)
	)

COLLECTIVE ACTION COMPLAINT

Plaintiffs Abdela Turn, Najib Sayed. Celso Florendo, and Tadeusz Olszynski, (hereinafter collectively referred to as "Named Plaintiffs"), by and through their attorneys, allege for their Complaint as follows:

I. INTRODUCTION

1. Named Plaintiffs bring this action against Barber Foods, Inc., d/b/a Barber Foods ("Barber Foods") for legal relief to redress unlawful violations of the Named Plaintiffs' rights under the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201, et seq., and specifically the [Page 2] collective action provision of the Act found § 2 16(b), to remedy violations of the wage provisions of the FLSA by Barber Foods, which have deprived the Named Plaintiffs, as well as others similarly situated to the Named Plaintiffs, of their lawful wages.

2. The Named Plaintiffs are current and former Barber Foods hourly employees who have worked at Barber Foods' poultry processing plants as non-exempt employees entitled to minimum wage, regular wage, and overtime pay under the FLSA. Named Plaintiffs allege, on behalf of themselves and all similarly-situated persons, that Barber Foods has willfully engaged in a pattern and practice of unlawful conduct by failing to record, credit, or compensate Barber Foods' non-exempt, hourly wage poultry processing employees, including the Named Plaintiffs and potential opt-in plaintiffs for all of the time Barber Foods requires or permits such employees to perform work.

3. Other current and former employees of Barber Foods are also entitled to receive unpaid wage and/or overtime compensation for the reasons alleged in this Complaint. The named Plaintiffs are permitted to maintain this action "for and on behalf of themselves and other employees similarly situated." 29 U.S.C. § 2 16(b). Any similarly-situated employee wishing to be the a party plaintiff to this action must provide "his consent in writing to become such a party," and such consent must be filed with this Court. 29 U.S.C. § 216(b). Written Consents to Become Party Plaintiff

for each of the four Named Plaintiffs are filed herewith as attachments to this Complaint.

4. Defendant's practices are in direct violation of the FLSA, 29 U.S.C. § 201 *et seq.* The Named Plaintiffs seek injunctive and declaratory relief, compensation, and credit for all unrecorded and uncompensated work required or permitted by Barber Foods, liquidated and/or [Page 3] damages as permitted by applicable law, and attorneys' fees and costs.

II. PRELIMINARY STATEMENT

5. This action is brought to recover unpaid hourly and overtime compensation owed to the Named Plaintiffs and all current and former employees of Defendant who are similarly situated to the Named Plaintiffs, pursuant to the FLSA. The Named Plaintiffs and the collective group similarly situated are or have been employed at the Barber Foods facility in Portland, Maine. The Named Plaintiffs and the collective group of similarly situated individuals include persons working for Barber Foods in positions such as, but not limited to, production line worker, machine operator, set-up operator, and housekeeper.

6. Barber Foods has engaged in the practice of requiring or permitting its hourly non-exempt poultry processing employees to perform work for the benefit of Barber Foods, but for which Barber Foods does not record, credit or compensate its non-exempt hourly employees.

7. Barber Foods' practice of requiring or permitting its hourly non-exempt employees to work off-the-clock is in violation of the FLSA, because such employees perform work for the benefit of Barber Foods which is uncompensated at their regular hourly wage. To the extent that such work is performed during a workweek in which the affected employees have, or would have, worked in excess of forty (40) hours per week, such practice further violates the overtime pay provisions of the FLSA by virtue of

Defendant's failure to pay compensation at a rate of one and one-half (1 ½) times the employees' regular hourly wage rate.

III. JURISDICTION AND VENUE

8. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. 1331; and Section 216(b) of the FLSA, 29 U.S.C. § 216(b). [Page 4]

9. Venue is proper in the District of Maine pursuant to 28 U.S.C. §1391(b) and (c). Barber Foods is licensed to do business and is doing business in Maine and may be found in the District of Maine. The acts complained of occurred in the District of Maine and gave rise to the claims alleged herein.

IV. PARTIES

A. NAMED PLAINTIFFS

10. Named Plaintiff Abdela Tum is resident of Portland, Maine. Turn has been employed by Barber Foods from approximately March 28, 1990, through the present. Tum has worked as an hourly wage employee in Barber Foods' Portland poultry processing plant as a production line worker and housekeeper. At all relevant times, Turn has been an employee of Barber Foods within the meaning of the FLSA.

11. Named Plaintiff Najib Sayed is resident of Portland, Maine. Sayed was employed by Barber Foods from 1995 until February 15, 2000. Sayed worked as an hourly wage employee in Barber Foods' Portland poultry processing plant as a line worker and housekeeper. At all relevant times, Sayed was an employee of Barber Foods within the meaning of the FLSA.

12. Named Plaintiff Celso Florendo is a resident of Portland, Maine. Florendo has been employed by Barber Foods from approximately July 14, 1994, through the present. Florendo has worked as an hourly wage employee in

Barber Foods' Portland poultry processing plant as a production line worker and a machine operator. At all relevant times, Florendo has been an employee of Barber Foods within the meaning of the FLSA.

13. Named Plaintiff Tadeusz Olszynski is a resident of Portland, Maine. Olszynski has been employed by Barber Foods from approximately October 1991, through the present. Olszynski [Page 5] has worked as an hourly wage employee in Barber Foods' Portland poultry processing plant as a machine set-up operator. At all relevant times, Olszynski has been an employee of Barber Foods within the meaning of the FLSA.

B. DEFENDANT

14. Defendant Barber Foods is a Maine corporation with its headquarters located in Portland, Maine. Barber Foods is a poultry processor with a facility in Portland, Maine. Barber Foods employs approximately 750 persons.

V. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

15. The poultry processing operations, general plant conditions, and wage and compensation policies and practices for all non-exempt hourly wage employees at Barber Foods' poultry processing plant are substantially similar, if not identical.

16. Barber Food's poultry processing plant is essentially an assembly-line operation. Chickens move through the facilities on various "Specialty Lines" where employees perform a discrete task on the chickens, such as packing the chicken parts into trays, smoothing the product, "switching" or arranging the product, and closing the product packages for shipment from the plant. On other Specialty Lines, the workers perform such tasks as wrapping pasty around chicken parts, and closing raw patties with stuffing.

Housekeepers perform tasks such as cleaning the floor and emptying trash. Machine Operators and Machine Set-up Operators prepare machines and the line to perform certain tasks and keep production line machines in operating order by making adjustments, transport chicken to the production lines, deposit chicken into formers, and operate the production machinery. Named Plaintiffs and potential opt-in plaintiffs all work or have worked in various positions on these lines. [Page 6]

18. Chicken processing is labor-intensive, dangerous and often unpleasant work. Regardless of the line on which they have worked or other positions they have held, the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action must keep pace with a fast-moving conveyor belt while they use knives, scissors, or their hands to perform assigned tasks. Many sections of the plant are wet and slippery, and some sections are kept very cold to prevent damage to the poultry. In addition, as a poultry processor, Barber Foods must ensure that federal and other required sanitation standards are met and that the poultry products are not contaminated during processing.

19. As a result of these conditions and requirements, Named Plaintiffs and potential opt-in plaintiffs of the Collective Action are generally required to wear the following safety and sanitary equipment: (a) cotton liner gloves, because the plant is cold; (b) rubber outer gloves, which protect the employees' hands from nicks and cuts on the line and prevent contamination of the chicken; (c) a coat that protects the employees' clothing and prevents the product from being contaminated; (d) an inner vest for warmth; (e) plastic sleeves that protect the employees' arms from cuts, as well as their clothing; (f) earplugs, which prevent hearing damage; (g) safety glasses which protect employees' eyes; (h) a halt-net, to prevent contamination of the chicken; (i) a hat which protects employees' heads from injury as well as preventing contamination of the chicken; and (j) a special black belt, also for employee safety.

Machine operators and set-up operators are also required to wear steel-toed boots; they do not always wear the rubber gloves.

20. Barber Foods requires the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to arrive at work long before the beginning of their scheduled shift schedules to engage in certain activities for Barber Foods' benefit. Such activities include obtaining and putting [Page 7] on the required safety and sanitary clothing, equipment, and gear, and obtaining their tools. The employees must stand in a line to receive from a single window their allotment of clothing and equipment and gear, then proceed to a locker area to obtain other clothing and tools from lockers, put on the clothing, equipment, and gear, and then proceed to the cafeteria to wait to enter the production floor. The Named Plaintiffs and potential opt-in plaintiffs of the Collective Action also frequently receive instructions from supervisors regarding job assignments during this time. Such work activities typically consume thirty-five (35) minutes. The Named Plaintiffs and potential opt-in plaintiffs of the Collective Action are not permitted to clock in before entering the production floor and do not receive credit for, and are not compensated for, any of this extra, unpaid work performed for the benefit of Barber Foods. Barber Foods does not record, report, or maintain records of such unpaid work performed by the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action.

21. Barber Foods requires the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to continue working through part or all of their unpaid lunch break because lunch time is the only practical opportunity for workers to use the bathroom. For sanitary reasons, the Named Plaintiffs and potential opt-in plaintiffs must remove their safety and sanitary equipment, clothing, and gear before entering the bathroom and then, still on unpaid break time, must put back on their safety and sanitary equipment, clothing, and gear prior to eating lunch and/or returning to

the line for work. Additionally, the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action must often obtain, and put on, replacements for coats or gloves or other gear that are soiled and/or torn. The Named Plaintiffs and potential opt-in plaintiffs of the Collective Action do not receive credit for, and are not compensated for, any of this extra, unpaid work performed for [Page 8] the benefit of Barber Foods. Consequently, the Named Plaintiffs and potential opt-in plaintiffs typically receive only about twenty (20) minutes of actual break time. Barber Foods does not record, report, or maintain records of such unpaid work performed by the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action.

22. The Named Plaintiffs and potential opt-in plaintiffs of the Collective Action occasionally require medical treatment or examination for illness or injury. On such occasions, they are sometimes ordered by supervisors to visit the plant nurse's office during their unpaid break time. The Named Plaintiffs and potential opt-in plaintiffs of the Collective Action do not receive credit for, and are not compensated for, any of this extra, unpaid work performed for the benefit of Barber Foods. Consequently, on such occasions the Named Plaintiffs and potential opt-in plaintiffs receive little or no actual break time for that day. Barber Foods does not report such unpaid work performed by the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action.

23. At the end of their shifts, the Named Plaintiffs and the potential opt-in plaintiffs are required to remove their safety equipment, clothing, and gear, and to deposit it in their lockers, the laundry or other return bin, or the garbage. The Named Plaintiffs and potential opt-in plaintiffs are not compensated for this work time.

24. Barber Foods' supervisors know that Barber Foods employees perform work that is uncompensated. The supervisors observe the employees, and often direct them in, performing work for the benefit of Barber Foods during time that is not recorded by Barber Foods. In addition, the

supervisors determine which time worked by the employees will be paid by Barber Foods.

25. Barber Foods knew or should have known that its supervisory and management personnel permit or require Named Plaintiffs and potential opt-in plaintiffs of the Collective Action [Page 9] to perform work which is for the benefit of Barber Foods, and which is integral to Barber Foods' poultry processing business, without appropriate compensation, including time spent waiting in line to obtain safety and sanitary equipment and gear, putting on, taking off, exchanging, and discarding safety and sanitary equipment, clothing, and gear, reporting early and awaiting instructions for their job assignments, and seeing company medical personnel during their unpaid breaks.

26. Barber Foods has willfully engaged in a pattern and practice of unlawful conduct by declining to record and pay for all of the time it requires or permits its employees to work, in violation of the FLSA. Barber Foods' unlawful conduct has been repeated and consistent

27. The conduct of Barber Foods, set forth above, has been willful, in bad faith, and has caused significant damages to Named Plaintiffs and potential opt-in plaintiffs of the Collective Action.

VI. COLLECTIVE ACTION ALLEGATIONS

28. The Named Plaintiffs bring a Claim for Relief for violation of the FLSA as a collective action pursuant to Section 216(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all non- exempt hourly employees of Barber Foods who were, are or will be employed in Barber Foods' poultry processing plants during the period of three years prior to the date of commencement of this action through the date of judgment of this action, who have not been compensated at their regular rate of pay for time worked off-the-clock, or at one and one-half times the regular rate of pay for all work performed in excess of forty (40) hours per work week. The

Named Plaintiffs are putative members of the collective action on whose behalf all claims alleging violations of FLSA are brought.

29. A claim for relief for violations under the FLSA may be brought and maintained as an "opt-in" collective action pursuant to § 216(b) of FLSA, 29 U.S.C. § 216(b), for all claims [Page 10] asserted by the Named Plaintiffs, because the claims of the Named Plaintiffs are similar to the claims of the putative members of the Collective Action.

30. Potential opt-in members of the Collective Action are similarly situated to the Named Plaintiffs. They have substantially similar job requirements and pay provisions, and are subject to a common practice, policy or plan that requires or permits them to perform uncompensated work for the benefit of Barber Foods, some of which is in excess of forty (40) hours per workweek. All Named Plaintiffs and potential opt-in plaintiffs of the Collective Action work or have worked for Barber Foods as non-exempt hourly employees in Barber Foods' chicken processing plants. All Named Plaintiffs and potential opt-in plaintiffs of the Collective Action perform or have performed work "off-the-clock" for the benefit of Barber Foods. None of the Named Plaintiffs or potential opt-in plaintiffs of the Collective Action has been credited or compensated for their respective "off-the-clock" work performed for the benefit of Barber Foods. All Named Plaintiffs and potential opt-in plaintiffs of the Collective Action have suffered damages, including lost wages, and/or lost overtime compensation, resulting from Barber Foods' wrongful conduct. In addition, all Named Plaintiffs and potential opt-in plaintiffs of the Collective Action are entitled to injunctive relief, as permitted by law, because Barber Foods' violations of various federal statutes have harmed and are continuing to harm them.

31. Named Plaintiffs have retained counsel competent and experienced in complex collective actions and FLSA litigation.

32. Named Plaintiffs bring this action on behalf of

themselves and the proposed Collective Action on behalf of all similarly-situated employees, as follows: former employees of Barber Foods who have held non-exempt positions at any time during all or any part of the period [Page 11] beginning three years before the filing of this complaint to the present, and who have not been fully compensated at regular or overtime wage rates for all hours worked.

33. The hourly employees at Barber Foods have been subject to the unlawful practices alleged herein and, therefore, are similarly situated to the Named Plaintiffs in this Collective Action. Barber Foods has engaged in a pattern and practice of permitting or requiring Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to work "off-the-clock" before "line time" began, after "line time" ended, and/or during unpaid breaks, for the benefit of Barber Foods and without appropriate compensation, in violation of the FLSA.

34. Barber Foods has engaged in a pattern and practice of failing to keep accurate records showing all hours worked by Named Plaintiffs and potential opt-in plaintiffs of the Collective Action, in violation of the FLSA.

35. Barber Foods has engaged in a pattern and practice of permitting or requiring Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to work overtime in excess of 40 hours in a workweek without appropriate compensation, in violation of the FLSA.

36. Barber Foods has engaged in a pattern and practice of permitting or requiring Plaintiffs and potential opt-in plaintiffs of the Collective Action to perform work for the benefit of Barber Foods during unpaid breaks.

37. Barber Foods' conduct as alleged has been willful.

38. Named Plaintiffs and potential opt-in plaintiffs of the Collective Action are entitled to lost wages, liquidated damages and the other relief requested.

39. The claims of the Named Plaintiffs are similar to those of the potential opt-in plaintiffs, in that Named

Plaintiffs have been subjected to the same practices as the potential opt-in [Page 12] plaintiffs Collective Action, and Named Plaintiff's claims are based on the same legal theory as potential opt-in plaintiffs of the Collective Action.

40. Named Plaintiff's FLSA claims are maintainable as a Collective Action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b).

VII. INDIVIDUAL NAMED PLAINTIFF ALLEGATIONS

43. **Named Plaintiff Abdela Tum** has been employed by Barber Foods from approximately March 28, 1990, through the present. Tum has worked as an hourly employee as a production line worker, a machine set-up operator, and a housekeeper. In production, he performed tasks such as closing, smoothing, and packing the poultry product. As a machine set-up operator, Tum was responsible for operating, and making minor adjustments on, production machines, and related duties. As a housekeeper, Tum has cleaned up spilled chicken parts and plastic covering material off of the production floor, and performed related duties.

44. Tum has been required to wear various safety and sanitary equipment and gear for all of his job duties, including: two sets of gloves, coat, vest, plastic sleeves, earplugs, safety glasses, hairnet, a hat, and safety belt.

45. Before punching in on the time clock each day, Turn has had to obtain and put on this safety equipment and gear, all of which took a total of at least thirty-five (35) minutes. Tum also frequently has received job assignment instructions from supervisors during this time. Tum has not been compensated for any of these activities, which are integral and indispensable to Barber Foods' poultry processing business and relate to his principal employment duties.

46. After completing his work, Tum has had to remove and return, discard, or store his required safety and sanitary equipment and gear, which typically takes ten (10) minutes.

Tum has [Page 13] not been compensated for any of these activities, which are integral and indispensable to Barber Foods' poultry processing business and relate to his principal employment duties.

47. Tum is entitled to a thirty (30)-minute unpaid lunch break each day. Tum has been required to remove his required safety and sanitary equipment and gear before going to the restroom during his unpaid lunch break, and then to put the equipment and gear back on afterward. On some occasions, Tum has been required to obtain replacement clothing and/or gear during his unpaid lunch break. As a result, Tum has received only twenty (20) minutes of actual break time because he has performed ten (10) minutes of work that was integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

48. On occasions when Tum became ill or injured on the job, he has been required to see the company nurse during his unpaid break. As a result, he had little, if any, free time to eat lunch, rest, or use the bathroom. Tum has not been compensated for time spent seeing the nurse, which is integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

49. Tum's supervisors have known that he was not compensated for all work performed. Each day, they have seen him perform integral and indispensable tasks for the benefit of Barber Foods and determined the time worked for which Tum was to be compensated.

50. Tum has been compensated for approximately forty (40) hours per week. In total, Turn has been denied compensation, at the applicable overtime premium rate, for approximately fifty-five (55) minutes per day, or approximately 275 minutes (about 4.6 hours) per five-day workweek (proportionally more for occasional weekend work), on average, for work in excess of forty (40) hours per week. Tum also has not been compensated for an

undetermined amount of time [Page 14] spent seeing the company nurse during his unpaid break time.

51. **Named Plaintiff Najib Sayed** was employed by Barber Foods from approximately 1994 through February 15, 2000. Sayed worked as an hourly employee as a production line worker and a housekeeper. In production, he performed tasks such as closing, smoothing, packing, and palletizing the poultry product. As a housekeeper, Sayed cleaned up spilled chicken parts and plastic covering material off of the production floor and under the boxing machines, lifting boxes, emptying trash, and performed related duties.

52. Sayed was required to wear various safety and sanitary equipment and gear for all of his job duties, including: two sets of gloves, coat, vest, plastic sleeves, earplugs, safety glasses, hairnet, a hat, and safety belt.

53. Before punching in on the time clock each day, Sayed had to obtain and put on this safety equipment and gear, all of which took a total of at least thirty-five (35) minutes. Sayed also frequently received job assignment instructions from supervisors during this time. Sayed was not compensated for any of these activities, which are integral and indispensable to Barber Foods' poultry processing business and relate to his principal employment duties.

54. After completing his work, Sayed had to remove and return, discard, or store his required safety and sanitary equipment and gear, which typically took ten (10) minutes. Sayed was not compensated for any of these activities, which were integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

55. Sayed was entitled to a thirty (30) minute unpaid lunch break each day. Sayed was required to remove his required safety and sanitary equipment and gear before going to the restroom during his unpaid lunch break, and then to put the equipment and gear back on afterward. [Page 15] On some occasions, Sayed was required to obtain replacement clothing and/or gear during his unpaid lunch break. As a

result, Sayed received only twenty (20) minutes of actual break time because he performed ten (10) minutes of work that was integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

56. When Sayed became ill or injured on the job, he was required to see the nurse during his unpaid break. As a result, he had little, if any, free time to eat lunch, rest, or use the bathroom. Sayed was not compensated for time spent seeing the nurse, which is integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

57. Sayed's supervisors knew that he was not compensated for all work performed. Each day, they saw him perform integral and indispensable tasks for the benefit of Barber Foods and determined the time worked for which Sayed was to be compensated.

58. Sayed was compensated for approximately forty (40) hours per week. In total, Sayed was denied compensation, at the applicable overtime premium rate, for approximately fifty- five (55) minutes per day, or approximately 275 minutes (about 4.6 hours) per five-day workweek (proportionally more for occasional weekend work), on average, for work in excess of forty (40) hours per week. Sayed also was not compensated for an undetermined amount of time spent seeing the company nurse during his unpaid break time.

59. **Named Plaintiff Celso Florendo** has been employed by Barber Foods from approximately July 14, 1994, through the present. Florendo has worked as an hourly wage employee as a production line worker and a machine operator. In production, he performed tasks such as closing, smoothing, and packing the poultry product. As a machine operator, Florendo has been [Page 16] responsible for preparing the machine and line to perform certain tasks, and operating, and making minor adjustments on, production

machines, and related duties. On some occasions, Florendo has helped to pack poultry products.

60. Florendo has been required to wear various safety and sanitary equipment and gear for all of his job duties, including: two sets of gloves, coat, vest, plastic sleeves, earplugs, safety glasses, hairnet, a hat, steel-toed boots, and safety belt.

61. Before punching in on the time clock each day, Florendo has had to obtain and put on this safety equipment and gear and his tools, all of which took a total of at least thirty-five (35) minutes. Florendo has also frequently received job assignment instructions from supervisors during this time. Florendo has not been compensated for any of these activities, which are integral and indispensable to Barber Foods' poultry processing business and relate to his principal employment duties.

62. After completing his work, Florendo has had to remove and return, discard, or store his required safety and sanitary equipment and gear, which typically takes ten (10) minutes. Florendo has not been compensated for any of these activities, which are integral and indispensable to Barber Foods' poultry processing business and relate to his principal employment duties.

63. Florendo is entitled to a thirty (30) minute unpaid lunch break each day. Florendo has been required to remove his required safety and sanitary equipment and gear before going to the restroom during his unpaid lunch break, and then to put the equipment and gear back on afterward. On some occasions, Florendo has been required to obtain replacement clothing and/or gear during his unpaid lunch break. As a result, Florendo has received only twenty (20) minutes of actual break time because he has performed ten (10) minutes of work that was integral and [Page 17] indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

64. Florendo's supervisors knew that he was not compensated for all work performed. Each day, they saw him

perform integral and indispensable tasks for the benefit of Barber Foods and determined the time worked for which Florendo was to be compensated.

65. Florendo has been compensated for approximately forty (40) hours per week. In total, Florendo has been denied compensation, at the applicable overtime premium rate, for approximately fifty-five (55) minutes per day, or approximately 275 minutes (about 4.6 hours) per five-day workweek (proportionally more for occasional weekend work), on average, for work in excess of forty (40) hours per week.

66. **Named Plaintiff Tadeusz Olszynski** has been employed by Barber Foods from approximately October 1991 through the present. Olszynski has worked as an hourly wage employee as a machine set-up operator. As a machine set-up operator, Olszynski has been responsible for preparing the machine and line to perform certain tasks, setting up, operating, making minor adjustments on, and cleaning production machines, and related duties.

67. Olszynski has been required to wear various safety and sanitary equipment and gear for all of his job duties, including: gloves, coat, vest, plastic sleeves, earplugs, safety glasses, hairnet, a hat, steel-toed boots, and safety belt.

68. Before punching in on the time clock each day, Olszynski has had to obtain and put on this safety equipment and gear, all of which took a total of at least thirty-five (35) minutes. Olszynski also frequently has received job assignment instructions from supervisors during this time. Olszynski has not been compensated for any of these activities, which are integral and indispensable [Page 18] to Barber Foods' poultry processing business and relate to his principal employment duties.

69. After completing his work, Olszynski has had to remove and return, discard, or store his required safety and sanitary equipment and gear, which typically takes ten (10) minutes. Olszynski has not been compensated for any of these activities, which are integral and indispensable to

Barber Foods' poultry processing business and relate to his principal employment duties.

70. Olszynski is entitled to a thirty (30) minute unpaid lunch break each day. Olszynski has been required to remove his required safety and sanitary equipment and gear before going to the restroom during his unpaid lunch break, and then to put the equipment and gear back on afterward. On some occasions, Olszynski has been required to obtain replacement clothing and/or gear during his unpaid lunch break. As a result, Olszynski has received only twenty (20) minutes of actual break time because he has performed ten (10) minutes of work that was integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

71. On occasions when Olszynski became ill or injured on the job, he has been required to see the company nurse during his unpaid break. As a result, he had little, if any, free time to eat lunch, rest, or use the bathroom. Olszynski has not been compensated for time spent seeing the nurse, which is integral and indispensable to Barber Foods' poultry processing business and related to his principal employment duties.

72. Olszynski's supervisors knew that he was not compensated for all work performed. Each day, they saw him perform integral and indispensable tasks for the benefit of Barber Foods and determined the time worked for which Olszynski was to be compensated.

73. Olszynski has been compensated for approximately forty (40) hours per week. In [Page 19] total, Olszynski has been denied compensation, at the applicable overtime premium rate, for approximately fifty-five (55) minutes per day, or approximately 275 minutes (about 4.6 hours) per five-day workweek (proportionally more for occasional weekend work), on average, for work in excess of forty (40) hours per week. Olszynski also has not been compensated for an undetermined amount of time spent seeing the company nurse during his unpaid break time.

VIII. FLSA CLAIMS

74. The Named Plaintiffs reallege and incorporate by reference the above paragraphs as if they were set forth again herein.

75. For the past 3 years, Barber Foods has willfully violated the FLSA by engaging in a pattern or practice, including the following:

(a) Failing to keep accurate records showing all the time it permitted or required Named Plaintiffs and potential opt-in plaintiffs of the Collective Action towork and perform integral and indispensable activities for the benefit of Barber Foods which has resulted in the denial of compensation, either at a regular rate or an overtime premium for all time worked in excess of forty (40) hours in a work week, as required by the FLSA; and

(b) Permitting or requiring Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to work and perform integral and indispensable activities for the benefit of Barber Foods before the regular paid work shift without compensation at the applicable regular or overtime premium rates, as required by the FLSA; and

(c) Permitting or requiring Named Plaintiffs and potential opt-in plaintiffs of the [Page 20] Collective Action to work and perform integral and indispensable activities for the benefit of Barber Foods during unpaid breaks without compensation at the applicable regular or overtime premium rates, as required by the FLSA; and

(d) Permitting or requiring Named Plaintiffs and potential opt-in plaintiffs of the Collective Action to work and perform integral and indispensable activities for the benefit of Barber Foods after the regular paid work

shift without compensation at the applicable regular or overtime premium rates, as required by the FLSA.

IX. PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs, on behalf of themselves and all putative members of the proposed Collective Action, pray for relief as follows:

A. Awarding damages from Barber Foods for the Named Plaintiffs and potential opt-in plaintiffs of the Collective Action, including compensation for unrecorded work time, and liquidated and exemplary damages, in amounts to be proven at that
B. Awarding all costs of litigation, including expert fees and attorneys' fees.
C. Awarding such other legal and equitable relief as the Court deems proper.

X. JURY DEMAND

92. Plaintiffs further demand a jury to try all issues triable as of right to jury, who joined. [Page 21]

Respectfully submitted this 12th day of December, 2000.

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM,	)	
NAJIB SAYED,	)	
CELSO FLORENDO and	)	
TADEUSZ OLSZYNSKI,	)	
	)	
Plaintiffs,	)	CIVIL NO.CV-00-371-P-C
	)	
v.	)	
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

ANSWER

I. INTRODUCTION

1. Barber Foods denies any violation of the Fair Labor Standards Act, but admits that Plaintiffs are bringing this action pursuant to the FLSA.

2. Barber Foods admits that Plaintiffs are current and former employees and are nonexempt employees, but denies the remaining allegations of Paragraph 2.

3. Barber Foods denies that any current or former employees are entitled to receive unpaid wages or overtime compensation. The remaining allegations are legal assertions which require no response.

4. Barber Foods denies that its practices are in violation of the FLSA.

II. PRELIMINARY STATEMENT

5. Barber Foods denies that the named plaintiffs are "similarly situated" to all of its employees in the listed job positions. [Page 2]

6. Barber Foods denies the allegations of Paragraph 6.

7. Barber Foods denies the allegations of Paragraph 7.

III. JURISDICTION AND VENUE

8. Barber Foods admits the allegations of Paragraph 8.

9. Barber Foods admits the allegations of Paragraph 9.

IV. PARTIES

A. NAMED PLAINTIFFS

10. Barber Foods admits the allegations of Paragraph 10.

11. With the exception that Mr. Sayed was initially hired in 1993, Barber Foods admits to the allegations of Paragraph 11.

12. With the exception that Mr. Florendo was hired on July 18, 1994, Barber Foods admits the allegations of Paragraph 12.

13. With the exception that Mr. Olszynski was hired on September 16, 1991, Barber Foods admits the allegations of Paragraph 13.

B. DEFENDANT

14. Barber Foods admits the allegations of Paragraph 14.

V. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

15. Barber Foods denies the allegations of Paragraph 15.

16. Barber Foods admits the allegations of Paragraph 16. [Page 3]

18 (sic). Barber Foods denies Plaintiffs' characterizations of the work as "dangerous" and "often unpleasant" and that "many" sections of the plant are "slippery", but otherwise admits the allegations of Paragraph 18.

19. Barber Foods admits the allegations of Paragraph 19.

20. Barber Foods denies the allegations of Paragraph 20.

21. Barber Foods denies the allegations of Paragraph 21.

22. Barber Foods admits that Plaintiffs occasionally require medical treatment or examination, but denies the remaining allegations of Paragraph 22.

23. Barber Foods admits the allegations of Paragraph 23, but denies that the described activities constitute work time.

24. Barber Foods denies the allegations of Paragraph 24.

25. Barber Foods denies the allegations of Paragraph 25.

26. Barber Foods denies the allegations of Paragraph 26.

27. Barber Foods denies the allegations of Paragraph 27.

VI. COLLECTIVE ACTION ALLEGATIONS

28. The allegations of this paragraph are legal assertions which do not require a response.

29. Barber Foods denies the allegations of Paragraph 29.

30. Barber Foods denies the allegations of Paragraph 30.

31. Barber Foods is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 21. [Page 4]

32. The allegations of this paragraph are legal assertions which do not require a response.

33. Barber Foods denies the allegations of Paragraph 33.

34. Barber Foods denies the allegations of Paragraph 34.

35. Barber Foods denies the allegations of Paragraph 35.

36. Barber Foods denies the allegations of Paragraph 36.

37. Barber Foods denies the allegations of Paragraph 37.

38. Barber Foods denies the allegations of Paragraph 38.

39. Barber Foods denies the allegations of Paragraph 39.

40. Barber Foods denies the allegations of Paragraph 40.

VII. INDIVIDUAL NAMED PLAINTIFF ALLEGATIONS

43.(sic) Barber Foods admits the allegations of Paragraph 43.

44. Barber Foods admits the allegations of Paragraph 44.

45. Barber Foods admits that Tum has not been compensated for preliminary activities, but denies the remaining allegations of Paragraph 45.

46. Barber Foods admits that Tum has not been compensated for postliminary activities, but denies the remaining allegations of Paragraph 46.

47. Barber Foods admits that employees have an unpaid 30-minute lunch break and must remove sanitary equipment before using the restroom, but denies the remaining allegations of Paragraph 47.

48. Barber Foods denies the allegations of Paragraph 48. [Page 5]

49. Barber Foods denies the allegations of Paragraph 49.

50. Barber Foods denies the allegations of Paragraph 50.

51. With the exception that Mr. Sayed was originally hired in 1993, Barber Foods admits the allegations of Paragraph 51.

52. Barber Foods admits the allegations of Paragraph 52.

53. Barber Foods admits that Sayed has not been compensated for preliminary activities, but denies the remaining allegations of Paragraph 53.

54. Barber Foods admits that Sayed has not been compensated for postliminary activities, but denies the remaining allegations of Paragraph 54.

55. Barber Foods admits that employees have an unpaid 30-minute lunch break and must remove sanitary equipment before using the restroom, but denies the remaining allegations of Paragraph 55.

56. Barber Foods denies the allegations of Paragraph 56.

57. Barber Foods denies the allegations of Paragraph 57.

58. Barber Foods denies the allegations of Paragraph 58.

59. With the exception that Mr. Florendo was hired on July 18, 1994, Barber Foods admits the allegations of Paragraph 59.

60. Barber Foods admits the allegations of Paragraph 60.

61. Barber Foods admits that Florendo has not been compensated for preliminary activities, but denies the remaining allegations of Paragraph 61. [Page 6]

62. Barber Foods admits that Florendo has not been compensated for postliminary activities, but denies the remaining allegations of Paragraph 62.

63. Barber Foods admits that employees have an unpaid 30-minute lunch break and must remove sanitary equipment before using the restroom, but denies the remaining allegations of Paragraph 63.

64. Barber Foods denies the allegations of Paragraph 64.

65. Barber Foods denies the allegations of Paragraph 65.

66. With the exception that Mr. Olszynski has been employed by Barber Foods since September 16, 1991, Barber Foods admits the allegations of Paragraph 66.

67. Barber Foods admits the allegations of Paragraph 67.

68. Barber Foods admits that Olszynski has not been compensated for preliminary activities, but denies the remaining allegations of Paragraph 68.

69. Barber Foods admits that Olszynski has not been compensated for postliminary activities, but denies the remaining allegations of Paragraph 69.

70. Barber Foods admits that employees have an unpaid 30-minute lunch break and must remove sanitary equipment before using the restroom, but denies the remaining allegations of paragraph 70.

71. Barber Foods denies the allegations of Paragraph 71.

72. Barber Foods denies the allegations of Paragraph 72.

73. Barber Foods denies the allegations of Paragraph 73. [Page 7]

VIII. FLSA CLAIMS

74. Barber Foods repeats and realleges its responses to the allegations of Paragraphs 1 through 73 above as if fully set forth herein.

75. Barber Foods denies the allegations of Paragraph 75(a) - 75(d).

AFFIRMATIVE DEFENSES

1. The activities for which Plaintiffs seek compensation are preliminary and postliminary activities for which no compensation is due pursuant to 29 U.S.C. § 254(a).

2. Any claims for damages for the period preceding two years from the commencement of the action are barred by the limitations period set forth in 29 U.S.C. § 255(a), because any alleged violations by Barber Foods were not willful.

3. Barber Foods is not liable for liquidated damages because its actions were in good faith and with reasonable grounds to believe that it was not violating any provisions of the FLSA. 29 U.S.C. § 260.

4. Any alleged work time for which Plaintiffs have not been compensated is of such a small amount that any such time is not compensable under the *de minimus* doctrine.

WHEREFORE, Barber Foods requests judgment in its favor and that it be awarded its costs.

Dated: January 4, 2001.

_____

Graydon G. Stevens
Attorney for Defendant

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

BARBER FOODS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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[page2]STATEMENT OF FACTS

1. BARBER FOODS - GENERAL

1.1. Barber Foods is a further processor of poultry-based, center-of-the-plate products. Its production facilities are located at one site in Portland.[1]

1.2. Barber Foods has two production shifts. Both shifts have six lines - three specialty lines and three pack-out lines. The specialty lines are where the product - Chicken Kiev, Chicken Cordon Bleu, etc. - is assembled. After moving through the specialty lines, the finished product moves into large spiral freezers. The product comes out the other side of the freezers onto pack-out lines where it is pouched, packed and palletized.[2]

1.3. The production lines are staffed primarily by what Barber Foods calls rotating associates (the associates generally rotate to different positions on the lines every two hours). The rotating associates are the largest classification of associates at Barber Foods. There are 149 rotating associates on each shift. This number has not changed significantly in the last three years.[3]

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[1] Bickford Affidavit, ¶ 2.
[2] Bickford Affidavit, ¶ 3.
[3] Bickford Affidavit, ¶ 4.

1.4. In addition to rotating associates, each line has set-up operators whose primary duties are to make sure that the various machines on the lines are operating [page 2] smoothly. The specialty lines have a forming machine which forms the basic product, e.g. chicken fingers, nuggets, or patties for a stuffed product, a stuffing machine, and a breading machine. The pack-out lines have a poucher, a boxer, and a taper. The set-up operators set the machines up for the particular product being run, making adjustments as directed to things such as temperature, speed, resupply, thickening batter, correcting jambs, etc. The set-up operators are the second largest classification of associates at Barber Foods. There are 34 set-up operators on each shift. This number has not changed significantly in the last three years.[4]

1.5. Barber Foods has no slaughtering, butchering, or deboning operations. It purchases boneless chicken breast in bulk. The chicken breast is prepared for the production lines in the meatroom, where the raw product is thawed, ground, blended with ingredients, and put into formula for the various products.[5]

2. THE PLAINTIFFS

2.1. There are 44 plaintiffs - 7 present associates and 37 former associates. The plaintiffs fall within the following six job classifications:[6]

Rotating Associates
Set-up Operators
Meatroom
Shipping & Receiving
Maintenance

---

[4] Bickford Affidavit, ¶ 5.
[5] Bickford Affidavit, ¶ 6.
[6] Bickford Affidavit, ¶ 7.

- Sanitation [page 3]

2.2. Exhibit 1 is a list of the plaintiffs by job classification, with dates of emp! ment and shift.[7]

3. SHIFT SCHEDULES

3.1. Barber Foods has three shifts. The first two shifts are production shifts and the third shift is for the sanitation crew. The shift schedules are:[8]

First:	6:30 a.m. - 3:00 p.m.
Second:	3:45 p.m. - 12:15 a.m.
Third:	11:30 p.m. - 6:30 a.m.

3.2. Associates in different job classifications start at varying times prior to the general production shift start. The start times for the job classifications relevant to this case are as follows:[9]

First Shift

Set-up Operators:	5:00 a.m.
Maintenance:	5:00 a.m.
Meatroom:	5:00/5:30 a.m.
Shipping & Receiving:	5:45/6:15 a.m.
Rotating Associates:	6:30 a.m.

Second Shift

Meatroom:	2:00 p.m.
Maintenance:	3:00 p.m.
Set-up Operators:	3:15 p.m.
Shipping & Receiving:	3:15 p.m.
Rotating Associates:	3:45 p.m. [page 4]

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[7] Bickford Affidavit, ¶ 8.
[8] Bickford Affidavit, ¶ 9.
[9] Bickford Affidavit, ¶ 10.

Third Shift

Sanitation: 11:30 p.m.

3.3. Associates are expected to be on the production floor ready to work when their shift commences. However, with some variation by job classification, there is generally a twelve minute buffer period at the start of the shift whereby associates are allowed to punch in up to six minutes early and may also punch in up to six minutes late without being deemed tardy; e.g., a rotating associate on the first shift may punch in between 6:24 a.m. and 6:36 a.m. Associates are paid from the time they actually punch in, although they may be subject to counseling and/or disciplinary action at their crew lead's discretion if they do not punch in within the twelve minute buffer period.[10]

4. BREAKS

4.1. Associates are given two paid breaks, 15 minutes in the first half of the shift and 10 minutes in the second half. In each break they are given an extra 5 minutes to get to and from the production floor to the cafeteria/break area, so the actual paid time away from production is actually 20 minutes and 15 minutes, respectively.[11]

4.2. Associates are given a 30 minute unpaid meal break in the middle of the shift. They are also given an extra five minutes with this break to get to and from the [page 5] production floor to the cafeteria/break area, so the actual time away from production is 35 minutes, 5 paid and 30 unpaid.[12]

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[10] Bickford Affidavit, ¶ 11.
[11] Bickford Affidavit, ¶ 12; Whittier Deposition: 56.2-57.4, 58.17-59.12.
[12] Bickford Affidavit, ¶ 13; Whittier Deposition: 56.2-57.4, 58.17-59.12.

4.3. Associates may leave the premises during their breaks. They must remove their lab coat before leaving the plant.[13]

4.4. Sanitation associates on the third shift are paid from punch-in to punch-out, with no deduction for an unpaid meal break.[14]

5. SANITARY/SAFETY CLOTHING/EQUIPMENT - GENERAL

5.1. All associates are required to have on the following sanitary and/or safety clothing or equipment before entering the production floor: lab coat, hairnet, beardnet (if applicable) and earplugs. Since October 15, 2001, Barber Foods has also required all associates on the production floor to wear safety glasses. Before October 15, only certain positions or tasks required safety glasses.[15]

5.2. In addition to the lab coat, hairnet/beardnet, earplugs, and safety glasses required by every associate entering the production floor, there are other items of clothing or equipment worn by some [page 6] associates for safety, sanitary, or comfort purposes. Depending upon job classification, assignment, and personal preference, some combination of the following may be worn: vinyl gloves, cotton glove liners, vinyl aprons, sleeve covers, bump hats, back belt, steel-toed boots.[16]

5.3. Lab coats and cotton glove liners are available to the associates in the hallway between the cafeteria and the

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[13] Bickford Affidavit, ¶ 14.
[14] Bragg Affidavit, ¶ 7.
[15] Whittier Affidavit, ¶ 2.
[16] Whittier Affidavit, ¶ 3.

equipment cage. The lab coats are on hanger racks and the cotton glove liners are in tubs separated by size.[17]

5.4. Hairnets, beardnets, earplugs, vinyl gloves, sleeve covers, and aprons are dispensed from the window of the equipment cage.[18]

5.5 Vinyl gloves, sleeve covers, and aprons are also available from tubs on the production floor. Associates may obtain these items from the window or the tubs, at their option. Most associates obtain sleeve covers and aprons, if they choose to wear them, from the tubs on the production floor.[19]

5.6. Before August 3, 1999, hairnets/beardnets, earplugs, vinyl gloves, sleeve covers, and aprons, along with lab coats and cotton glove liners, were available to associates from racks and tubs in the cafeteria. Since August 3, 1999 these items, with the exception of the lab coats and glove liners, have been dispensed from the cage.[20] [page 7]

5.7. The cage is open continuously from 5:00 a.m. - 1:00 a.m. It is staffed by one associate, with a second assistant from 5:30 a.m. - 7:30 a.m. and 1:30 p.m. - 4:00 p.m.[21]

5.8. There are male and female locker rooms and all associates are offered the use of a locker. Associates may use their lockers at their option to store reusable clothing or equipment such as safety glasses, bump hat, back belt, safety boots, and for personal belongings or clothing.[22]

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[17] Whittier Affidavit, ¶ 4.
[18] Whittier Affidavit, ¶ 5.
[19] Whittier Affidavit, ¶ 6.
[20] Whittier Affidavit, ¶ 7.
[21] Whittier Affidavit, ¶ 8.
[22] Whittier Affidavit, ¶ 9.

6. SANITARY/SAFETY CLOTHING/EQUIPMENT - BY JOB CLASSIFICATION

The required clothing/equipment in each relevant job classification are:

6.1. Rotating Associates[23]

- Lab coat
- Hairnet/beardnet
- Earplugs
- Safety glasses

6.2. Set-up Operators[24]

- Lab coat
- Hairnet
- Earplugs
- Safety glasses
- Steel-toed boots
- Bump hat
- Back belt [page 8]
- LOTO (lock out/tag out)

6.3. Meatroom[25]

- Lab coat
- Hairnet/beardnet
- Earplugs
- Safety glasses
- Gloves (vinyl)
- Apron (heavier-weight vinyl)

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[23] Smith Affidavit, ¶ 2.
[24] Ive Affidavit, ¶ 2.
[25] Goodwin Affidavit, ¶ 2.

- Sleeve covers (heavier-weight vinyl)
- Rubber steel-toed boots
- Back belt
- LOTO

6.4. Shipping & Receiving[26]

- Safety glasses
- Steel-toed boots
- Bump hat/hard hat

Lab coat, hairnet/beardnet, and earplugs are required whenever enter the production floor. Freezer-wear required when enter freezer.

6.5. Maintenance[27]

- Safety glasses
- Steel-toed boots
- LOTO

Lab coat, hairnet/beardnet, and earplugs are required whenever enter the production floor. Specific safety equipment, e.g., welding mask, required depending [page 9] upon task being performed.

6.6. Sanitation[28]

- Lab coat
- hairnet/beardnet
- Earplugs
- Safety glasses
- Gloves

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[26] Scanlin Affidavit, ¶ 2.
[27] Shaw Deposition: 11.3-11.24, 12.19-13.9, 19.14-19.20, 20.1-20.17.
[28] Bragg Affidavit, ¶ 2.

- Rain pants
- Rubber steel-toed boots
- Bump cap
- Hose nozzle
- LOTO
- Tool clip (with 3 wrenches)(Level 2 associates)

7. SANITARY/SAFETY CLOTHING/EQUIPMENT - POST-SHIFT DISPOSAL

7.1. Lab coats and cotton glove liners are laundered and reused. Laundry bins are located at several locations along the hallway from the production floor exits to the plant exits and associates drop the coats and liners in these bins on their way out of the plant.[29]

7.2. Vinyl gloves, sleeve covers, and aprons are disposable. Trash bins are located on the production floor and along the hallway from the production floor exits to [page 10] the plant exits. These items may be removed and deposited in the trash bins on the production floor before punching out if the associate chooses.[30]

7.3. Bump hats, back belts, safety glasses, steel toed safety boots, and reusable earplugs are retained by associates and may be stored in their locker, in their vehicle, or taken home, at their option.[31] Most associates issued steel-toed boots wear them home.[32]

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[29] Page Affidavit, ¶ 2.
[30] Page Affidavit, ¶ 3.
[31] Page Affidavit, ¶ 4.
[32] Page Affidavit, ¶ 4.

8. TIME KEEPING PRACTICES

8.1. Barber Foods utilizes a computerized time-keeping system. Each associate has a swipe card with a bar code. The system downloads clock punches into the payroll software.[33]

8.2. Time clocks are located at the entrances/exits to the production floor and at the various production areas, such as packout 1, specialty 2, meatroom, etc.[34]

8.3. Rotating associates, set-up operators, and meatroom associates generally punch in at a clock in the area where they will be working and punch out on the "out" clocks which are located next to the two primary entrances/exits.[35] Maintenance [page 11] associates punch in and out on their own time clock in the maintenance room.[36] Shipping and receiving associates punch in and out on the plant office clock located by the shipping and receiving office.[37] Sanitation associates punch in on the cafeteria clock and punch out on one of the "out" clocks on the production floor.[38]

8.4. Associates are paid from punch in to punch out. The system automatically deducts ½ hour for the unpaid meal break, with the exception of sanitation associates who are paid from punch in to punch out and are paid through their meal break.[39]

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[33] Bickford Affidavit, ¶ 15.
[34] Bickford Affidavit, ¶ 16.
[35] Smith Affidavit, ¶ 3; Ive Affidavit, ¶ 3; Goodwin Affidavit, ¶¶ 3-4; Page Deposition: 99.16-100.5.
[36] Shaw Deposition: 25.5-25.7, 25.22-25.24.
[37] Scanlin Affidavit, ¶¶ 3-4.
[38] Bragg Affidavit, ¶¶ 3, 5.
[39] Bickford Affidavit, ¶ 17.

9. PLANT LAYOUT

9.1. Exhibit 2 consists of drawings of the production floor and lower level with the production areas, entrances/exits, time clocks, equipment cage and other referenced locations identified and highlighted, and approximate distances given.[40]

10. PRE-SHIFT/POST SHIFT ACTIVITIES

10.1. There is no specific "assembly line" arrival process. Some associates grab their lab coats and glove liners, go to the cage, and then to their lockers; others go to their lockers, then back to the cage. Some associates stop and socialize in the cafeteria before picking up anything, others go to the cage and/or lockers and then back to the cafeteria. [page 12] Some do not socialize, but simply pick up their stuff and proceed directly to the production floor with the required clothing and equipment ready to work when the shift starts.[41]

10.2. Depending upon the route taken, the actual walking time from entering the plant to arriving at the time clock where the associate punches in may be from 1-3 minutes.[42]

10.3. During busier times, there occasionally may be small lines at the coat racks and glove liner bins, at the cage window, or at the time clocks. During these times, an associate occasionally may have to wait, usually less than a minute, to obtain a coat and glove liners, or to obtain items

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[40] Bickford Affidavit, ¶ 18.
[41] Page Affidavit, ¶ 5.
[42] Page Affidavit, ¶ 6.

from the cage, or to punch in. Most often, there are no lines and it takes only a few seconds each to grab a coat and glove liners, get a hairnet and gloves from the cage, and to punch in.[43]

10.4. Generally, depending upon job classification, time of day, and personal preference, it can take from 1-5 minutes from entering the plant to punching in at the appropriate time clock, including walking time, waiting time, obtaining clothing or equipment, and donning of clothing or equipment.[44] [page 13]

ROTATING ASSOCIATES

10.5. Associates punch in on the production floor on time clocks in their production area. Lab coats, hairnets, and earplugs must be on before entering the floor. Gloves, aprons, and sleeve covers are optional. Most associates wear gloves. Aprons and sleeve covers are worn by most associates on the specialty lines, infrequently on the packout lines.[45]

10.6. Exclusive of walking time and waiting time, it may take ½-1 minute to don a lab coat and a few seconds each to don a hairnet and earplugs before punching in. Hairnets and earplugs are often donned while walking to the floor. Gloves are generally donned after punching in. Aprons and sleeve covers, if the associate chooses to wear them, are usually obtained from tubs on the floor and donned after punching in.[46]

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[43] Smith Affidavit, ¶ 7; Page Deposition: 71.8-71.17, 88.8-88.25; Whittier Deposition: 37.5-37.10; Lamphier Deposition: 31.12-31.15, 34.12-34.25, 80.1-80.6; Bickford Deposition: 72.2-74.10.

[44] Whittier Deposition: 12.16-12.23, 31.7-31.23.

[45] Smith Affidavit, ¶ 3.

[46] Smith Affidavit, ¶ 4.

10.7. At the end of the shift, vinyl gloves, aprons and sleeve covers are usually doffed and thrown in the trash bins on the production floor before punching out. After punching out, hairnets, earplugs, safety glasses, and gloves take seconds to doff and are usually doffed while walking. Doffing the lab coat may take 30 seconds. The hairnet is thrown in trash bins located in the hallway and lab coat and glove liners thrown in laundry bins while the associate is walking out of the plant.[47][page 14]

SET-UP OPERATORS

10.8. Associates don the required equipment and then punch in on the production floor on time clocks in their production area. It takes approximately 3 minutes to don everything if they did not wear their steel-toed boots from home.[48]

10.9. Prior to punching out, associates return to the cage any items they had checked out earlier in connection with the machines they were operating that day, such as cook code numbers and metal detection sticks. These are small items that can easily be held in one hand or in the pocket of the lab coat. It may take up to 1 minute to return these items to the cage.[49]

10.10. After punching out at the end of the shift, associates deposit lab coat, gloves, and hairnet in the laundry and trash bins on the way out. Safety glasses, bump hat, steel-toed boots, and LOTO are stored in their lockers or

[47] Smith Affidavit, ¶ 5.
[48] Ive Affidavit, ¶ 3.
[49] Ive Affidavit, ¶ 4.

taken home. It takes less than 3 minutes to doff all equipment.[50]

MEATROOM

10.11. Associates don the required equipment and punch in at the meatroom clock. It takes approximately 3 minutes to don the required clothing and equipment.[51] [page 15]

10.12. At the end of the shift, the associates wash their boots if necessary and then punch out at one of the "out" clocks by the exits. They deposit lab coat, gloves, hairnet, sleeve covers, and aprons in the laundry and trash bins. Gloves, aprons, and sleeve covers may be, and usually are, deposited in the trash before punching out. Remaining items are stored in the locker or taken home. It takes less than 3 minutes to doff all equipment after punching out.[52]

SHIPPING AND RECEIVING

10.13. Associates go to the shipping office and don lab coat, hairnet, and earplugs before entering production floor to punch in at the plant office clock. It takes a minute or less to don this equipment. After punching in, they return to the shipping office to doff the lab coat, hairnet, and earplugs and go to their assigned area, unless they are going directly to work on the production floor or freezer from the time clock.[53]

10.14. At the end of the shift, they must again don lab coat, hairnet, and earplugs before entering the production

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[50] Ive Affidavit, ¶ 5.
[51] Goodwin Affidavit, ¶ 3.
[52] Goodwin Affidavit, ¶ 4.
[53] Scanlin Affidavit, ¶ 3.

floor to punch out at the plant office clock. After punching out, they leave their white coat in the shipping office, drop the hairnet and earplugs in the trash, and leave the plant. It takes less than 1 minute to doff the coat, hairnet, and earplugs after punching out.[54][page 16]

MAINTENANCE

10.15. Maintenance associates have their own time clock in the maintenance department.[55] Associates generally pick up a lab coat from a room off the hallway immediately after entering the plant and then proceed directly to the maintenance room to punch in. Any required clothing or equipment is put on after punching in. Associates may come in and go directly to maintenance to punch in before getting their lab coat, but most associates grab their coat on the way to the maintenance room for convenience purposes.[56]

10.16. At the end of the shift, associates doff all equipment and deposit it in the trash or store it in their lockers before punching out. The lab coat is dropped in a laundry bin on the way out.[57]

SANITATION

10.17. Associates punch in on the cafeteria clock. They may punch in between 11:20 p.m. - 11:36 p.m. There is a nightly meeting in the cafeteria at 11:35 p.m. After the meeting, the associates go upstairs to work at 11:45 p.m.[58][page 17]

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[54] Scanlin Affidavit, ¶ 4.
[55] Shaw Deposition: 25.5-25.7, 25.22-25.24.
[56] Shaw Deposition: 22.1-22.24, 25.1-25.7, 25.25-27.11, 28.19-28.24, 29.22-30.5.
[57] Shaw Deposition: 30.6-32.10.
[58] Bragg Affidavit, ¶ 3.

10.18. Associates are paid to get ready. The general practice is to punch in at the cafeteria and then get one's clothing and equipment and report back to the cafeteria for the 11:35 p.m. meeting. Associates may obtain and don their clothing and equipment before going to the cafeteria to punch in if they wish, but this would be at their option, it is not required. If an associate is running late, he/she will punch in when he/she arrives for the meeting and then get dressed after the meeting before going upstairs.[59]

10.19. At the end of the shift, the associates wash their rain pants and tools while on the clock and then punch out at the plant office clock. They then go down the stairs, deposit their lab coats and glove liners in the laundry bins, their hairnets, gloves and other disposables in the trash bins, and their rain pants, boots and other reusable items in their lockers.[60]

10.20. Depending upon the associate, it usually takes from 2-4 minutes to put on all required equipment pre-shift and slightly less time to take it off and deposit it in the laundry and trash bins and in the lockers post-shift. Much of it is done while walking.[61]

11. MEAL BREAKS

11.1. Associates are free to do anything they wish, including leaving the premises, during their unpaid break.[62][page 18]

11.2. Lab coats must be removed if an associate leaves the premises. Lab coats, gloves, aprons, and sleeve

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[59] Bragg Affidavit, ¶ 4.
[60] Bragg Affidavit, ¶ 5.
[61] Bragg Affidavit, ¶ 6.
[62] Bickford Affidavit, ¶ 19.

covers must be removed if the associate uses the bathroom.[63] Most associates, if they are wearing aprons or sleeve covers, will throw them away when they take them off and will obtain new ones from tubs on the production floor after returning from break.[64]

12. MEDICAL APPOINTMENTS

12.1. Barber Foods has a medical office which is staffed by a nurse from 6:00 a.m. - 6:30 p.m., Monday - Friday, and also by a physician from 2:00 p.m. - 5:00 p.m., Tuesdays and Thursdays.[65]

12.2. Initial appointments are made by an associate's crew lead. This is done electronically. The nurse posts the appointment times in half-hour increments on the computer and if an associate needs to visit the office on other than an emergency basis, the crew lead checks the available appointment times on the computer and generally tries to schedule the associate for the next available slot.[66]

12.3. Appointments are always scheduled during an associate's shift if possible. Associates are paid for visiting the medical office.[67] [page 19]

12.4. Appointments cannot be scheduled during an associate's meal break on the second and third shifts because the medical office is not staffed when those meal breaks occur. On the first shift, medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot, the

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[63] Whittier Affidavit, ¶ 10.
[64] Whittier Affidavit, ¶ 10.
[65] Bickford Affidavit, ¶ 20.
[66] Bickford Affidavit, ¶ 21.
[67] Bickford Affidavit, ¶ 22.

employee is paid for the time and allowed to take his or her entire meal break before or after the appointment.[68]

12.5. Barber Foods is not aware of any situation where an associate was required to visit the medical office during a meal break, not paid for that time, and not allowed to make up the entire break. If this did happen, it would be contrary to Barber Food's policies.[69]

FACTS RELEVANT TO STATUTE OF LIMITATIONS

13.1. Barber Foods was not aware and is not aware that its policies concerning pre-shift and post-shift activities, meal breaks, and medical appointments complained of by the plaintiffs failed to comply with the Fair Labor Standards Act.[70]

13.2. Peter Bickford, Barber Foods' Human Resources Business Partner, is primarily responsible for monitoring FLSA compliance. Mr. Bickford attends annual [page 20] seminars on labor and employment issues, including segments on wage and hour issues, and subscribes to numerous periodicals, including trade magazines, human resources managers' newsletters, Maine Employment Law Letter, and Maine Business & Employment Law, all of which deal regularly with current issues under the FLSA. Mr. Bickford is not aware of anything he has learned or received through those seminars or periodicals which indicates that

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[68] Bickford Affidavit, ¶ 23; Smith Affidavit, ¶ 6; Ive Affidavit, ¶ 6; Goodwin Affidavit, ¶ 5; Scanlin Affidavit, ¶ 5; Page Deposition: 102.2-103.14, 115.10-115.13; Whittier Deposition: 113.17-115.2.

[69] Bickford Affidavit, ¶ 24; Smith Affidavit, ¶ 6; Ive Affidavit, ¶ 6; Goodwin Affidavit, ¶ 5; Scanlin Affidavit, ¶ 5.

[70] Bickford Affidavit, ¶ 25.

Barber Foods' wage and hour policies are not in compliance with the law.[71]

13.3. The following plaintiffs left the employ of Barber Foods more than two years before the filing of this action.[72]

Toan Dang	4/2/98
Mohammad Habibzai	5/7/98
Lee Lacroix	7/22/98

Dated: November 8, 2001.

_____

Graydon G. Stevens
Attorney for Defendant Barber Foods

KELLY, REMMEL & ZIMMERMAN
53 Exchange Street
P.O. Box 597
Portland, Maine 04112
(207) 775-1020

**Handwriting omitted*

[71] Bickford Affidavit, ¶ 25.
[72] Bickford Affidavit, ¶ 26.

Exhibit 1

ROTATING ASSOCIATES

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Aitkenhead, Mark	9/21/98	5/17/99	1,2
Albair, Shaun	1/18/99	4/12/99	2
Carey, Allison	5/25/99	11/28/00	1,2
Carter, Erlinda	3/8/99	5/7/01	2
Chase, Corey	2/28/00	8/16/00	1,2
Dang, Toan	11/8/96	4/2/98	1,2
Dumont, Angela	6/19/00	7/10/00	1
Habibzai, Mohammad	1/11/93	5/7/98	1
Hailu, Letecheal	9/9/91		2
Huntley, Robert	12/20/99	5/17/00	2
Keraghan, Diane	7/2/96	5/17/99	1,2
Lemire, Gordon	11/30/98	1/29/99	2
Luongo, Natalie	6/5/00	9/6/00	1
Mason, Paul	12/7/98	10/18/99	2
Mekonen, Derso	4/29/91		1
Morgan, Lisa	9/20/99	5/22/00	2
Novikova, Tatyana	1/2/97		1,2
Ouellette, Robert	1/31/01	2/13/01	2
Pardue, Kyra	4/12/99	5/19/99	2
Raymond, Joseph	11/27/00	12/24/00	2
Rubito, Doug	10/12/93	12/15/00	2
Sayed, Najib	4/10/95	2/15/00	1
Theunissen, Evelyn	10/24/94		1
Tum, Abdela	3/28/90		1
Wallace, Heidi	9/7/00	1/15/01	1,2
Yirnam, Mintwab	11/17/97	2/9/01	1,2

SET-UP OPERATORS

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Florendo, Celso	7/18/94		2
Olszynski, Tadeusz	9/16/91		2

MEATROOM

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Levesque, Ernest	6/20/88	9/13/99	1

MAINTENANCE

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Bearce, Nicholas	8/10/98	10/22/99	1,2
Knox, Scott	4/15/98	7/6/00	2

SHIPPING AND RECEIVING

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Smith, Michael	1/16/79	7/30/99	1
Snow, Kevin	12/15/92	8/30/99	

SANITATION

NAME	DATE OF HIRE	DATE OF TERMINATION	SHIFT
Chadbourne, Sandra	12/27/99	4//17/00	3
Devine, William	1/4/99	2/8/99	3
Hamilton, Peter	8/30/99	9/28/99	3
Howard, Albert	7/7/95	6/16/99	3
Lacroix, Lee	3/30/98	7/22/98	3
Lewis, Gladstone	1/15/92	1/24/99	3
Reynolds, Brad	10/2/95	4/21/00	3
Rubin, Robert	11/23/98	8/26/99	3

MULTIPLE POSITIONS

NAME	DATE OF HIRE	DATE OF TERMINATION	JOB	SHIFT
LaMarche, Ken	7/20/98	8/26/99	Sanitation I (4/4/99)	3
			Production (5/10/99)	2
Ngo, The	9/12/94	8/19/99	Set-Up (12/15/96)	2
			Production (5/3/98)	2
Secord, Lauric	3/29/99	4/23/01	Production	2
			Set-up (10/31/99)	2

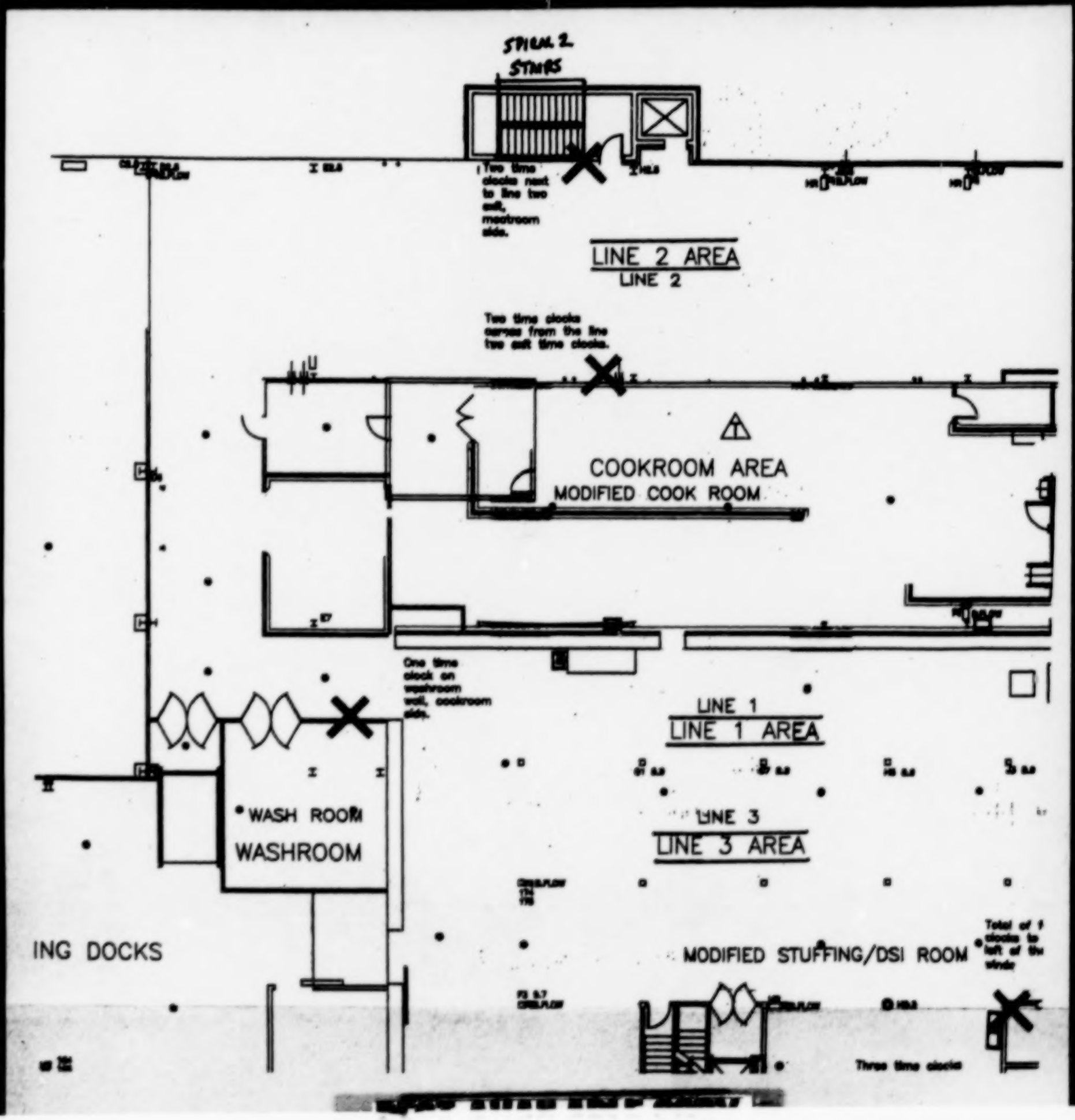
SPIRAL 2 STAIRS
Two time clocks next to line two exit, mealroom side.
LINE 2 AREA
LINE 2
Two time clocks across from the line two exit time clocks.
COOKROOM AREA
MODIFIED COOK ROOM
One time clock on washroom wall, cookroom side.
WASH ROOM
WASHROOM
LINE 1
LINE 1 AREA
LINE 3
LINE 3 AREA
ING DOCKS
MODIFIED STUFFING/DSI ROOM
Three time clocks

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

AFFIDAVIT OF PETER BICKFORD

I, Peter Bickford, state under oath as follows:

1. My name is Peter Bickford. I have been employed at Barber Foods since 1979 and have been manager of the human resources department since 1986. My current title is senior human resources business partner. I have personal knowledge of the matters discussed in this affidavit.

2. Barber Foods is a further processor of poultry-based, center-of-the-plate products. Its production facilities are located at one site in Portland.

3. Barber Foods has two production shifts. Both shifts have six lines - three specialty lines and three pack-out lines. The specialty lines are where the product - Chicken Kiev, Chicken Cordon Bleu, etc. - is assembled. After moving through the specialty lines, the finished product moves into large spiral freezers. The product comes [page2]

out the other side of the freezers onto pack-out lines where it is pouched, packed and palletized.

4. The production lines are staffed primarily by what Barber Foods calls rotating associates (the associates generally rotate to different positions on the lines every two hours). The rotating associates are the largest classification of associates at Barber Foods. There are 149 rotating associates on each shift. This number has not changed significantly in the last three years.

5. In addition to rotating associates, each line has set-up operators whose primary duties are to make sure that the various machines on the lines are operating smoothly. The specialty lines have a forming machine which forms the basic product, e.g. chicken fingers, nuggets, or patties for a stuffed product, a stuffing machine, and a breading machine. The pack-out lines have a poucher, a boxer, and a taper. The set-up operators set the machines up for the particular product being run, making adjustments as directed to things such as temperature, speed, resupply, thickening batter, correcting jambs, etc. The set-up operators are the second largest classification of associates at Barber Foods. There are 34 set-up operators on each shift. This number has not changed significantly in the last three years.

6. Barber Foods has no slaughtering, butchering, or deboning operations. It purchases boneless chicken breast in bulk. The chicken breast is prepared for the [page3] production lines in the meat room, where the raw product is thawed, ground, blended with ingredients, and put into formula for the various products.

7. There are 44 plaintiffs - 7 present associates and 37 former associates. The plaintiffs fall within the following six job classifications:

Rotating Associates
Set-up Operators
Meatroom
Shipping & Receiving
Maintenance
Sanitation

8. Exhibit 1 is a list of the plaintiffs by job classification, with dates of employment and shift.

9. Barber Foods has three shifts. The first two shifts are production shifts and the third shift is for the sanitation crew. The shift schedules are:

First:	6:30 a.m. - 3:00 p.m.
Second:	3:45 p.m. - 12:15 a.m.
Third:	11:30 p.m. - 6:30 a.m.

10. Associates in different job classifications start at varying times prior to the general production shift start. The start times for the job classifications relevant to this case are as follows:

First Shift

Set-up Operators:	5:00 a.m.
Maintenance:	5:00 a.m.
Meatroom:	5:00/5:30 a.m.
Shipping & Receiving:	5:45/6:15 a.m.
Rotating Associates:	6:30 a.m.

Second Shift

Meatroom:	2:00 p.m.
Maintenance:	3:00 p.m.
Set-up Operators:	3:15 p.m.
Shipping & Receiving:	3:15 p.m.
[page 4] Rotating Associates:	3:45 p.m.

Third Shift

Sanitation: 11:30 p.m.

11. Associates are expected to be on the production floor ready to work when their shift commences. However, with some variation by job classification, there is generally a twelve minute buffer period at the start of the shift whereby associates are allowed to punch in up to six minutes early and may also punch in up to six minutes late without being deemed tardy; e.g., a rotating associate on the first shift may punch in between 6:24 a.m. and 6:36 a.m. Associates are paid from the time they actually punch in, although they may be subject to counseling and/or disciplinary action at their crew lead's discretion if they do not punch in within the twelve minute buffer period.

12. Associates are given two paid breaks, 15 minutes in the first half of the shift and 10 minutes in the second half. In each break they are given an extra 5 minutes to get to and from the production floor to the cafeteria/break area, so the actual paid time away from production is actually 20 minutes and 15 minutes, respectively. [page 5]

13. Associates are given a 30 minute unpaid meal break in the middle of the shift. They are also given an extra five minutes with this break to get to and from the production floor to the cafeteria/break area, so the actual time away from production is 35 minutes, 5 paid and 30 unpaid.

14. Associates may leave the premises during their breaks. They must remove their lab coat before leaving the plant.

15. Barber Foods utilizes a computerized time-keeping system. Each associate has a swipe card with a bar

code. The system downloads clock punches into the payroll software.

16. Time clocks are located at the entrances/exits to the production floor and at the various production areas, such as packout 1, specialty 2, meatroom, etc.

17. Associates are paid from punch in to punch out. The system automatically deducts ½ hour for the unpaid meal break, with the exception of sanitation associates who are paid from punch in to punch out and are paid through their meal break.

18. Exhibit 2 consists of drawings of the production floor and lower level with the production areas, entrances/exits, time clocks, equipment cage and other referenced locations identified and highlighted, and approximate distances given.

19. Associates are free to do anything they wish, including leaving the premises, during their unpaid break.. [page 6]

20. Barber Foods has a medical office which is staffed by a nurse from 6:00 a.m. - 6:30 p.m., Monday - Friday and also by a physician from 2:00 p.m. - 5:00 p.m., Tuesdays and Thursdays.

21. Initial appointments are made by an associate's crew lead. This is done electronically. The nurse posts the appointment times in half-hour increments on the computer and if an associate needs to visit the office on other than an emergency basis, the crew lead checks the available appointment times on the computer and generally tries to schedule the associate for the next available slot.

22. Appointments are always scheduled during an associate's shift if possible. Associates are paid for visiting the medical office.

23. Appointments cannot be scheduled during an associate's meal break on the second and third shifts because the medical office is not staffed when those meal breaks occur. On the first shift, medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot, the associate is paid for the time and allowed to take his or her entire meal break before or after the appointment.

24. I am not aware of any situation where an associate was required to visit the medical office during a meal break, not paid for that time, and not allowed to make up the entire break. If this did happen, it would be contrary to Barber Food's policies. [page 7]

25. I am primarily responsible for monitoring FLSA compliance at Barber Foods. In my capacity as manager of the human resources department, I attend annual seminars on labor and employment issues, which usually contain segments on wage and hour issues, and subscribe to numerous periodicals, including trade magazines, human resources managers' newsletters, Maine Employment Law Letter, and Maine Business & Employment Law, all of which deal regularly with wage and hour issues. Nothing I have learned through attending these seminars or reviewing these periodicals has indicated to me that Barber Foods wage and our policies, and specifically those concerning pre-shift and post-shift activities, meal breaks, and medical appointments, fail to comply with the FLSA.

26. The following plaintiffs left the employ of Barber Foods more than two years before filing of this action:

Toan Dang	4/2/98
Mohammad Habibzai	5/7/98
Lee Lacroix	7/22/98

Dated: November 8, 2001.

_____

Peter Bickford

STATE OF MAINE

November 8, 2001.

Cumberland, ss.

Personally appeared Peter Bickford and gave oath that the above affidavit is true and correct to the best of his personal knowledge.
**Handwriting omitted.*
[page 8]

Before me,

_____

Notary Public/Attorney-at-Law
**Handwriting omitted.*

Exhibit 4

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

AFFIDAVIT OF WILLIAM WHITTIER

I, William Whittier, state under oath as follows:

1. My name is William Whittier. I have been employed at Barber Foods since 1991 and have been Director of Production for approximately six years. I have personal knowledge of the matters discussed in this affidavit.

2. All associates are required to have on the following sanitary and/or safety clothing or equipment before entering the production floor: lab coat, hairnet, beardnet (if applicable) and earplugs. Since October 15, 2001, Barber Foods has also required all associates on the production floor to wear safety glasses. Before October 15, only certain positions or tasks required safety glasses.

3. In addition to the lab coat, hairnet/beardnet, earplugs, and safety glasses required by every associate entering the production floor, there are other items of clothing [page 2] or equipment worn by some associates for safety, sanitary, or comfort purposes. Depending upon job

classification, assignment, and personal preference, some combination of the following may be worn: vinyl gloves, cotton glove liners, vinyl aprons, sleeve covers, bump hats, back belt, steel-toed boots.

4. Lab coats and cotton glove liners are available to the associates in the hallway between the cafeteria and the equipment cage. The lab coats are on hanger racks and the cotton glove liners are in tubs separated by size.

5. Hairnets, beardnets, earplugs, vinyl gloves, sleeve covers, and aprons are dispensed from the window of the equipment cage.

6. Vinyl gloves, sleeve covers, and aprons are also available from tubs on the production floor. Associates may obtain these items from the window or the tubs, at their option. Most associates obtain sleeve covers and aprons, if they choose to wear them, from the tubs on the production floor.

7. Before August 3, 1999, hairnets/beardnets, earplugs, vinyl gloves, sleeve covers, and aprons, along with lab coats and cotton glove liners, were available to associates from racks and tubs in the cafeteria. Since August 3, 1999 these items, with the exception of the lab coats and glove liners, have been dispensed from the cage.

8. The cage is open continuously from 5:00 a.m. - 1:00 a.m. It is staffed by one associate, with a second assistant from 5:30 a.m. - 7:30 a.m. and 1:30 p.m. - 4:00 p.m.

[page 3]

9. There are male and female locker rooms and all associates are offered the use of a locker. Associates may use their lockers at their option to store reusable clothing or

equipment such as safety glasses, bump hat, back belt, safety boots, and for personal belongings or clothing.

10. Lab coats must be removed if an associate leaves the premises. Lab coats, gloves, aprons, and sleeve covers must be removed if the associate uses the bathroom. Most associates, if they are wearing aprons or sleeve covers, will throw them away when they take them off and will obtain new ones from tubs on the production floor after returning from break.

Dated: November 8, 2001.

_____

William Whittier

STATE OF MAINE November 8, 2001.
Cumberland, ss.

Personally appeared William Whittier and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law

**Handwriting omitted*

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

AFFIDAVIT OF THOMAS PAGE

I, Thomas Page, state under oath as follows:

1. My name is Thomas Page. I have been employed at Barber Foods for 8 years and have been the second shift manager for over 3 years. I have personal knowledge of the matters discussed in this affidavit.

2. Lab coats and cotton glove liners are laundered and reused. Laundry bins are located at several locations along the hallway from the production floor exits to the plant exits and associates drop the coats and liners in these bins on their way out of the plant. [Page 2]

3. Vinyl gloves, sleeve covers, and aprons are disposable. Trash bins are located on the production floor and along the hallway from the production floor exits to the plant exits. These items may be removed and deposited in the trash bins on the production floor before punching out if the associate chooses.

4. Bump hats, back belts, safety glasses, steel toed safety boots, and reusable earplugs are retained by associates and may be stored in their locker, in their vehicle, or taken home, at their option. Most associates issued steel-toed boots wear them home.

5. There is no specific "assembly line" arrival process. Some associates grab their lab coats and glove liners, go to the cage, and then to their lockers; others go to their lockers, then back to the cage. Some associates stop and socialize in the cafeteria before picking up anything, others go to the cage and/or lockers and then back to the cafeteria. Some do not socialize, but simply pick up their stuff and proceed directly to the production floor with the required clothing and equipment ready to work when the shift starts.

6. Depending upon the route taken, the actual walking time from entering the plant to arriving at the time clock where the associate punches in may be from 1-3 minutes.

Dated: November 8, 2001.

_____

Thomas Page

**Handwriting omitted.* [Page 3]

STATE OF MAINE
Cumberland, ss.

November 8, 2001.

Personally appeared Thomas Page and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____
Notary Public/Attorney-at-Law

**Handwriting omitted.*

Exhibit 6
UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)
	)
Plaintiffs,	)
	)
v.	)CIVIL NO.CV-00-371-P-C
	)
BARBER FOODS,	)
	)
Defendant.	)

AFFIDAVIT OF CATHERINE SMITH

I, Catherine Smith, state under oath as follows:

1. My name is Catherine Smith. I have been employed at Barber Foods since 1992 and have been a crew lead on both the first and second shift since before December 1997. I have personal knowledge of the matters discussed in this affidavit.

2. All rotating associates are required to wear the following: lab coat, hairnet/beardnet, earplugs, and safety glasses.

3. Associates punch in on the production floor on time clocks in their production area. They must have their lab coats, hairnets and earplugs on before entering the floor to punch in. Gloves, aprons and sleeve covers are optional. Most associates choose to wear gloves. Aprons and sleeve covers are worn by most associates on the specialty lines, but infrequently on the pack-out lines. [Page 2]

4. Not counting walking time or any waiting time, it may take 30 seconds to a minute to actually don the lab coat and a few seconds each to don a hairnet and earplugs before punching in. Hairnets and earplugs are often donned by the associates while walking to the floor. Gloves are usually put on after punching in. Aprons and sleeve covers, if the associate chooses to wear them, are usually obtained from tubs on the production floor and donned after punching in.

5. At the end of the shift, the vinyl gloves, aprons and sleeve covers are usually doffed and thrown in the trash bins on the production floor before punching out. After punching out, the hairnet, earplugs, safety glasses and gloves take seconds to doff and are usually taken off while walking down the stairs. Doffing the lab coat may take 15 to 30 seconds. The hairnet is thrown in trash bins located in the hallway and the lab coat and glove liners are thrown in laundry bins while the associate is walking out of the plant.

6. Medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot on the nurse's schedule, the associate is paid for the time and allowed to take his or her entire unpaid meal break before or after the appointment. I am not aware of any situation where an associate was required to visit the medical office during a meal break, was not paid for that time, and was not allowed to make up the entire break.

7. During busier times, there occasionally may be small lines at the coat racks and glove liner bins, the cage windows, or at the time clocks. During these times, an [Page 3] associate occasionally may have to wait, usually less than a minute, to obtain a coat and glove liners, or to obtain items from the cage, or to punch in. Most often, there are no lines

and it takes only a few seconds each to grab a coat and glove liners, get a hairnet and gloves from the cage, or to punch in.

Dated: November 08, 2001.

_____

Catherine Smith
**Handwriting omitted*

STATE OF MAINE

November 8, 2001.

Cumberland, ss.

Personally appeared Catherine Smith and gave oath that the above affidavit is true and correct to the best of her personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law
**Handwriting omitted.*

Exhibit 7

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)
	)
Plaintiffs,	)
	)
v.	)CIVIL NO.CV-00-371-P-C
	)
BARBER FOODS,	)
	)
Defendant.	)

AFFIDAVIT OF TYRONE IVE

I, Tyrone Ive, state under oath as follows:

1. My name is Tyrone Ive. I have been employed at Barber Foods since 1984 and have been a set-up lead on both the first and second shift for over ten years. I have personal knowledge of the matters discussed in this affidavit.

2. All set-up operators are required to wear or have the following: lab coat, hairnet/beardnet, earplugs, safety glasses, steel-toed safety boots, bump hat, back belt, and LOTO (lockout/tag-out consisting of a padlock and plastic ID tag).

3. Associates don the required equipment and then punch in on the production floor on time clocks in their production area. It takes approximately three minutes to don everything. If they choose to wear their steel-toed safety boots home rather than keep them in the locker, it would take less time. [Page 2]

4. Prior to punching out, associates return to the cage any items they had checked out earlier in connection with the machines they were operating that day, such as cook code numbers and metal detector sticks. These are small items that can easily be held in one hand or in the pocket of the lab coat. It may take up to one minute to return these items to the cage.

5. After punching out at the end of the shift, associates deposit their lab coat, gloves and hairnet in the laundry and trash bins on the way out. Safety glasses, bump hat, back belt, steel-toed safety boots, and LOTO are stored in their lockers, in their vehicles, or taken home, at their option. Most store this equipment in their lockers although most associates do wear their boots home. It takes less than three minutes to doff and dispose of or store this equipment.

6. Medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot on the nurse's schedule, the associate is paid for the time and allowed to take his or her entire unpaid meal break before or after the appointment. I am not aware of any situation where an associate was required to visit the medical office during a meal break, was not paid for that time, and was not allowed to make up the entire break.

Dated: November 08, 2001.

_____

Tyrone Ive

[Page 3]

STATE OF MAINE
Cumberland, ss.

November 8, 2001.

Personally appeared Tyrone Ive and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law

Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)
	)
Plaintiffs,	)
	)
v.	)CIVIL NO.CV-00-371-P-C
	)
BARBER FOODS,	)
	)
Defendant.	)

AFFIDAVIT OF DOUGLAS GOODWIN

I, Douglas Goodwin, state under oath as follows:

1. My name is Douglas Goodwin. I have been employed at Barber Foods since 1991 and have been a meatroom lead since before December 1997. I have personal knowledge of the matters discussed in this affidavit.

2. All associates in the meatroom are required to wear or have the following: lab coat, hairnet/beardnet, earplugs, safety glasses, vinyl gloves, aprons (heavier weight vinyl), sleeve covers (heavier weight vinyl), rubber steel-toed boots, back belt, and LOTO.

3. Associates don the required equipment and then punch in at the meatroom clock. It takes approximately three minutes to don the required clothing and equipment. [Page 2]

4. At the end of the shift, the associates wash their boots, if necessary, and then punch out at one of the

"out" clocks by the exits. They deposit their lab coats, gloves, hairnet, sleeve covers and aprons in the laundry and trash bins. The vinyl gloves, aprons and sleeve covers may be, and usually are, deposited in the trash bins available on the production floor before punching out. The remaining items are stored in the locker or taken home. It takes less than three minutes to doff the equipment after punching out.

5. Medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot on the nurse's schedule, the associate is paid for the time and allowed to take his or her entire unpaid meal break before or after the appointment. I am not aware of any situation where an associate was required to visit the medical office during a meal break, was not paid for that time, and was not allowed to make up the entire break.

Dated: November 8, 2001.

_____

Douglas Goodwin

STATE OF MAINE November 8 ,2001.
Cumberland, ss.

Personally appeared Douglas Goodwin and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law

**Handwriting omitted.*

Exhibit 9

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

AFFIDAVIT OF TIMOTHY SCANLIN

I, Timothy Scanlin, state under oath as follows:

1. My name is Timothy Scanlin. I have been employed at Barber Foods since 1981 and have been a supervisor in the shipping and receiving department since before December 1997. I have personal knowledge of the matters discussed in this affidavit.

2. All associates in the shipping and receiving department are required to wear the following: safety glasses, steel-toed safety boots, and bump hat. A lab coat, hairnet, and earplugs are required whenever an associate must enter the production floor, and freezer wear is required when it is necessary to enter the freezer.

3. Associates punch in on the plant office clock on the production floor. When they arrive at work they go to the shipping office which is on the production floor level next to the entrance and don a lab coat, hairnet and earplugs in order to enter the [Page 2] production floor to punch in at

the clock. Lab coats, hairnets and earplugs are kept in the shipping office for this purpose. It takes one minute or less to put this equipment on in order to go in and punch the clock. After punching in, they return to the shipping office to doff the lab coat, hairnet and earplugs and then go to their assigned work area, unless they are going to work directly on the production floor or freezer from the time clock.

4. At the end of the shift, the associates punch out at the same clock. They must again come up to the shipping office and put on a lab coat, hairnet and earplugs before entering the production floor to punch out. After punching out, they leave the lab coat in the shipping office, drop the hairnet and earplugs in the trash, and leave the plant. It takes one minute or less to doff the coat, hairnet and earplugs after punching out.

5. Medical appointments are not scheduled during an associate's unpaid meal break. If it happens because this was the only available slot on the nurse's schedule, the associate is paid for the time and allowed to take his or her entire unpaid meal break before or after the appointment. I am not aware of any situation where an associate was required to visit the medical office during a meal break, was not paid for that time, and was not allowed to make up the entire break.

Dated: November 8, 2001.

_____

Timothy Scanlin

[Page 3]

STATE OF MAINE November 8 , 2001.
Cumberland, ss.

Personally appeared Timothy Scanlin and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law

Exhibit 10
UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	)
	)
Plaintiffs,	)
	)
v.	)CIVIL NO.CV-00-371-P-C
	)
BARBER FOODS,	)
	)
Defendant.	)

AFFIDAVIT OF CLETIS R. BRAGG, JR.

I, Cletis R. Bragg, Jr., state under oath as follows:

1. My name is Cletis R. Bragg, Jr. I have been employed at Barber Foods since 1981 and have been the third shift manager of the sanitation department since 1984. I have personal knowledge of the matters discussed in this affidavit.

2. All associates in the sanitation department are required to wear or have the following: lab coat, hairnet/beardnet, earplugs, safety glasses, gloves, rain pants, rubber steel-toed boots, bump cap, hose nozzle, LOTO. Level 2 associates are also required to have a tool clip (with three wrenches).

3. The shift is scheduled to start at 11:30 p.m. Associates punch in on the cafeteria clock. They may punch in between 11:20 p.m. - 11:36 p.m. We meet in the [Page 2] cafeteria at 11:35 p.m. to review safety issues and the night's routine. Following the meeting, we go upstairs to work at 11:45 p.m.

4. Associates are generally paid to get ready. The general practice is to punch in at the cafeteria and then get your clothing and equipment and report back to the cafeteria for the 11:35 p.m. meeting. Most associates are there having coffee or something to eat when the meeting starts. Associates may get and put on their clothing/equipment prior to 11:20 before coming back to the cafeteria to punch in if they wish, but this would be at their option, it is not required. If an associate is running late, he/she will punch in when he/she arrives for the meeting and then get dressed after the meeting before going upstairs. In any event, most associates choose to punch in before going to the cage and lockers and getting dressed.

5. At the end of the shift, the associates wash their rain pants and tools while on the clock and then punch out at the plant office clock. They then go down the stairs, deposit their lab coats and glove liners in the laundry bins, their hairnets, gloves and other disposables in the trash bins, and their rain pants, boots and other reusable items in their lockers.

6. Depending upon the associate, it generally takes from 2-4 minutes to put on the clothing and equipment pre-shift and slightly less time to take it off and deposit it in the laundry and trash bins and in the lockers post-shift. Much of it is done while walking. [Page 3]

7. Sanitation associates are paid from punch in to punch out. The 30 minute meal break is paid as coffee breaks cannot be guaranteed. No medical appointments are made during lunch as the medical office is not staffed during the third shift.

Dated: November __9__ , 2001.

_____

Cletis R. Bragg, Jr.

STATE OF MAINE November __9__ , 2001.
Cumberland, ss.
**Handwriting omitted.*

Personally appeared Cletis R. Bragg, Jr. and gave oath that the above affidavit is true and correct to the best of his personal knowledge.

Before me,

_____

Notary Public/Attorney-at-Law

**Handwriting omitted.*

Exhibit 11

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	) CV-00-- 371-P-C
vs.	)
	) VOLUME I
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30(b) (6) DEPOSITION of BARBER FOODS, INC. (William C. Whittier), taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 13, 2001, commencing at 3:15 P.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine.

[page 12]
1 on. We have had discussions about previous work places and
2 whether or not they have had like processes and whether or
3 not they paid the associates to put their uniforms, if you
4 will, on or not. That's basically a summary of what was
5 talked about.
6 Q. When you say previous work places, you mean previous
7 work places of the participants in the discussions?
8 A. Sure, sure.
9 Q. Okay. Well, by the way, are you aware of the
10 existence of litigation similar to this case raising these
11 same types of claims and issues in -- currently pending
12 against many companies in the poultry processing industry?
13 A. A little bit. I was aware there was some suits
14 brought against meat packers, specifically, and that there

was some activity on the poultry side.
Q. Okay. Now in terms of the amount of time that it takes, you said you have expressed surprise that it's an issue because it takes so little time. How long do you think it takes?
A. To prepare to walk onto the plant floor and to put on the equipment that's necessary, it could take you on the short side, one minute, and on the long side, four at worst case.
Q. Now what would be the variable or variables which would make it four minutes versus one minute or vice-versa?

[page 31]

lawyer for the plaintiffs here. I'm just going to ask you how long does it take -- do you know how long it takes for an employee to get through the various steps to get themselves to where they can clock in and exercise?
A. I believe it takes one minute in the best case scenario and five minutes in the worst.
Q. To actually get to the door, get in the building, go get their lab coats, get to the cage, including any line at the cage, go to their lockers, put on all their stuff, they can do that in a minute?
A. No, I would say to come in here, to come down the hallway, to go to the cage and to go up the stairs and onto the production line in this section of the plant, you could do it in a minute.
Q. Okay.
A. The locker stop might add a minute. When I'm saying five, I'm thinking coming in, walking down the hallway, getting supplies, coming back, going to the men's locker room, sliding on your boots, and going upstairs and getting to your work area, getting out in the plant to one of these clocks.
Q. One to five minutes?
A. One to five.

24 Q. Okay.
25 A. We have a lady I know does it in 30 seconds. We see
[page 37]
1 the past when parking got tight with people coming too
2 early to work and we had to advise them that we didn't
want
3 them to arrive any more than 20 minutes prior to their
4 shift.
Q. Is there -- have you ever observed any occasion when
6 there were more than say five or six people in the cage
7 line?
8 A. I have not.
9 Q. You have never seen that at all?
10 A. No.
11 Q. All right.
12 A. Some of the items at the cage are self-service, the
13 hair net and the ear plugs, if they need them, they can
14 reach into a bin and take them without having to
communicate with the attendants. And I believe I have seen
the gloves in a self-service bin on second shift.
Q. Okay. By the way, when the employees are swiping in on
their -- punching in at the various clocks, do you have the
same situation occur where someone has to swipe two or
three times to get it to register?
A. Maybe 5 percent of the time, 10.
Q. About like the punching out clock?
A. Yep, and they report it to their crew leader who makes
them a new time card. They become delaminated.
Q. Okay. So swiping then can take –
[page 56]
1 Q. Okay.
2 A. We have said in the past that we allow five minutes
3 travel time per break without breaking it down and
4 specifying.
5 Peter broke it down here and seems to have
6 rounded off and only come up with four. If you wanted to
7 talk to the amount of time that we allow for travel and

8 split it and call it beginning and end, it would be
9 two-and-a-half minutes because it's a total of five. The
10 origin of the five minutes was a meeting that I had with
11 Mr. DerHagopian probably seven years ago when he was
12 questioning me on whether or not our people were --
whether
13 or not we were getting the correct amount of production
and
14 what was I doing to monitor breaks. And I went to him
and
15 I said I really need to understand your guidelines before I
16 can report whether or not I'm monitoring breaks. And he
17 said -- and we went through a discussion about were we
18 going to time breaks from touching chicken to touching
19 chicken again and how rigid were we going to be. And at
20 that point, we decided we would time from the last person
21 leaving the line or the work area. The line has got two
22 work areas, the processing and the packing, so we said
from
23 the last person leaving the work area, as in processing, is
24 when we would begin to time it. And we, at that time,
25 decided to add five minutes for travel.
[page 57]
1 Q. Per day or per shift?
2 A. Per break.
3 Q. Per break?
4 A. Per break.
5 Q. Okay. And how did you come up with five minutes?
6 A. I didn't. He did. Sounded good to me and I said
7 okay.
8 Q. Okay.
9 A. Because I knew my employees would appreciate it.
10 Q. Okay. And yet you actually believe it takes
11 considerably less than that, I take it?
12 A. They don't need to rush if they're given
13 two-and-a-half minutes each way or a total of five
minutes.

14 Q. Okay. When they're in that two-and-a-half minutes,
15 it's your expectation that they would walk from where to
16 where on the charts?
17 A. Here. The cafeteria, as Peter said, reports at these
18 double doors.
19 Q. Diagram 3 is what the witness is using here.
20 A. Yep. So that will allow them to get back to where
21 they are workIng on the lines which could be anywhere.
22 Here. Pack-outs.
23 Q. Okay. The witness is indicating --
24 A. Processing areas and pack-out areas on number 4.
25 Q. Okay. So that would take them along this traffic –
[page 58]
1 this line of traffic that Mr. Page drew on the -- on
2 Exhibit 3?
3 A. Exactly.
4 Q. Okay. And onto the processing floor?
5 A. Yep.
6 Q. For that, you decided it takes two-and-a-half minutes,
7 right?
8 A. We--
9 Q. You and Mr. DerHagopian?
10 A. There was no science to it. He just said allow them
11 five minutes for travel.
12 Q. Okay. He thought that would be fair?
13 A. Yep.
14 Q. Okay.
15 A. And we didn't break it down, as Peter has.
16 Q. Okay.
17 A. So the result was a 15-minute -- 15-minute time period
18 between when you stopped working -- the last person
stopped
19 working and we began exercises in the case of the 10-
minute
20 break. A 20-minute period of time between when the last
21 person stopped working and we started exercises on the
22 15-minute break. And a 35-minute period of time between

23 when the last person stopped working and we began exercises
24 on the 30-minute break.
25 Q. Okay. Hold on now. There's five minutes for each
[page 59]
1 break?
2 A. That's correct.
3 Q. To allow for travel time?
4 A. Uh-huh.
5 Q. Whereas Mr. Bickford indicated in the interrogatory
6 answer that the paid time -- the break times are actually
7 19 and 14 minutes respectively, you're saying they're
8 actually 20 and 15 minutes respectively?
9 A. Yes.
10 Q. And that the -- for the lunch break, it's actually 35
11 minutes?
12 A. That's correct.
13 Q. Now I will ask Mr. Bickford tomorrow, but what's your
14 understanding of why he attached the numbers he did?
15 A. I haven't had a conversation with him about it. I
16 don't know.
17 Q. Okay.
18 A. But in all budgets that we have done, in all work I
19 have done with efficiency -- we have had a number of
20 efficiency consultants come in and question it, the
21 standard has been five minutes travel.
22 Q. What efficiency experts are you referring to?
23 A. It's not uncommon for a manufacturing concern to hire
24 an efficiency consultant to come in and look at how they're
25 operating and make recommendations on how they might

Exhibit 12

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	)CV-00--3 71-P-C
vs.	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30(b) (6) DEPOSITION of BARBER FOODS, INC. (Jeffrey David Shaw), taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 13, 2001, commencing at 9:15 A.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine.

[page 11]
1 Q. So that's what I'm going to mean when I say all 36.
2 A. Okay.
3 Q. All right. Do all 36 wear the same personal
4 protective equipment?
5 A. No, it changes depending on the type of work they're
6 doing and it also -- that's pretty much it, what type of
7 work they're doing.
8 Q. Okay. Is there any portion of the personal protective
9 equipment -- first of all, as I understand, that's
10 something of a term of meaning in the poultry processing
11 business, right?
12 A. Right.
13 Q. Would you define what that term means to you?
14 A. Personal protective equipment could be anything from
15 gloves, safety glasses, ear plugs, face shields, shin
16 guards, work boots. I can go on and on. There is a whole

17 host. Welding masks.
18 Q. Goon.
19 A. Okay. Welding masks, high temperature gloves, you can
20 have -- when you go on the protection floor, to protect the
21 food, over personal clothing, they wear jumpsuits, which I
22 mean overalls by that or they can wear the overcoats, as
23 well as hair nets are required, beard nets, and gloves if
24 they're going to actually handle any food.
25 Q. Okay. Are you familiar with the term LOTO, L-O-T-O?
[page 12]
1 A. Yes.
2 Q. What's LOTO?
3 A. It means lock-out tag-out. That's a program where you
4 are required to lock out machinery before you service the
5 machine in a repair mode, secure the power to protect the
6 person on the machine.
7 Q. So there is-
A. Consists of a padlock with a tag with a person's name
9 on it stating the reason why it's down, designates the
10 department the person is in, and there are many different
11 devices you can attach, depending if it's a valve or a
12 switch to attach that lock to.
13 Q. And do you actually refer to this in the work place as
14 LOTO, as I did, or is it something else?
15 A. Document form, yes, we use LOTO, but when you're
16 talking about it, it's called lock-out.
17 Q. Lock-out?
18 A. Yes.
19 Q. Okay. All right. Now, do all 36 of the maintenance
20 workers have a lock-out?
21 A. Yes, they do.
22 Q. Okay. All right. Now are there any -- is there any
23 subset of the items that you just described that comprise
24 all the personal protective equipment that maintenance

25 workers may wear, is there any subset of that that all the
[page 13]
1 maintenance workers always wear or use?
2 A. They always wear safety glasses. They
always have to
3 have an overall on or a lab coat when they go upstairs and
4 they must wear steel toed boots of some sort at all times
5 or steel toed shoes.
6 Q. Okay. Is there another subset of that personal
7 protective equipment which the maintenance workers
usually
8 wear?
9 A. That pretty much covers it.
10 Q. Okay. So all the other things that you listed - - and
11 there were quite a few -- depend on what they're doing?
12 A. Special circumstance, right. If they are going to do
13 welding, for instance, they would wear a welding mask,
but
14 they wouldn't wear a welding mask if they're going out
on
15 the floor.
16 Q. What about the hair net and beard cover and hearing
17 protection?
18 A. Hair net is required to go on the floor, but it's not
19 required in the shop. It's only when you go on the
20 production floor itself.
21 Q. Okay. I have here a-
22 MR. FLEMING: Graydon, I didn't really reproduce
23 it again because of the size and wasn't going to use it as
24 an exhibit, per Se, if we could -- I think we can probably
25 agree that these are the blueprints that you sent me or the
[page 19]
1 lockers in the maintenance room itself, so the maintenance
2 guys don't have any lockers there.
3 Q. Okay. All right. So with regard to personal
4 protective equipment that the maintenance workers wear,
how

5 do they find out each day what personal protective
6 equipment they're supposed to be wearing for that day?
7 A Okay. Your term personal protective equipment, is to
8 me not - - from a maintenance standpoint, I don't
think of
9 hair nets, beard nets, rubber gloves as personal
10 protective equipment. I think of that more as product -
11 protecting, so are you including all that?
12 Q. Right. Whatever they have to wear that is different
13 than their street clothes.
14 A. Okay. Every day, maintenance, when they come into
the
15 plant, they're told that steel toed boots are required at
16 all times for maintenance. When you enter the production
17 areas, you have to have a hair net on every day without
18 exception. If you have a beard, you have to have a beard
19 net on without exception. And coveralls or a lab coat as
20 well as ear plugs and safety glasses.
21 Q. Okay. Those are what they always wear?
22 A. What they always wear.
23 Q. At least with respect to the beard nets and the hair
24 nets if they go in the production floor?
25 A. Yes, if they're not -- well, go ahead.
[page 20]
1 Q. And if they're not going on the production floor?
2 A. If they're not going on the production floor, they
3 have to use safety glasses and steel toed work boots,
4 that's it.
5 Q. They wear safety glasses regardless of whether they
6 are doing a job right then?
7 A. Uh-huh.
8 Q. Any time they're in the plant?
9 A. Any time they're in the plant as of, I think it was,
10 February -- it was around February or March of
2001 that we
11 implemented a safety glass policy throughout the plant to
12 try to cut down on injury rates.

13 Q. And prior to that -- I mean, how did that new policy
14 change the old policy, how was it different?
15 A. The old policy, safety glasses were not required
16 unless you were doing some form of spark producing
17 equipment task or any type of hammering, things like that.
18 Q. So these items that are -- are always required,
19 routinely required, are they issued to the maintenance
20 workers and they keep them or did they have to obtain
some
21 of them each day?
22 A. Every day, they have to obtain either a lab coat or
23 overalls, coveralls, as we call them. As far as steel toed
24 boots, they're issued them once a year. It's up to them to
25 make sure they get them on before they enter the
production
[page 22]
1 Q. Where do they obtain that?
2 A. Currently, they obtain it as soon as they walk in the
3 lower level entrance, there's a little room off the right,
4 I believe it's the kiev room.
5 Q. It's what?
6 A. It's called the kiev room?
7 Q. The kiev room?
8 A. Yes. Currently, that's where the lab coats and the
9 coveralls are located. Prior to that -- well, prior to the
10 new construction where the new parts room is, they were
11 located in dry goods.
12 Q. In dry goods?
13 A. Yes.
14 Q. Now where is the kiev room?
15 A. Kiev room would be on this print here, on the lower
16 level north, it would be office, it says 118.
17 Q. Okay. Actually, that says 116, I think, isn't it?
18 A. Yes, 116.
19 Q. From whom -- well, do they just pick it up out of the
20 kiev room or is there a person that works in there that
21 hands them out?

A. No, they just pick it up either when they come into work or any time entering the building, they pick it up before they go on the floor. That's the main requirement.
Q. Where do they enter the building?
[page 25]
Q. They're all assigned to a particular line?
A. That's correct, they come into the shop, punch in, and go up to the production floor.
Q. Okay. All right. They punch in where?
A. As soon as they walk in the maintenance door, right there, there is a time clock. They all have time cards right next to the clock, they pick it out and punch in.
Q. So you are indicating on this diagram -- I suppose what we should do, really, is label these diagrams. It should have been obvious, I suppose. Why don't you do it,
just label this one in the lower left with a big number one.
A. Okay.
Q. And then let's label this one number two.
A. Uh-huh.
Q. Then three and four.
Okay. The witness has labeled the diagrams one, two, three and four. We are looking presently at diagram number one. The maintenance -- in the maintenance shop, there is a clock, a punch-in clock. Why don't you put an X where the maintenance clock is.
Okay. Thank you. Now their time cards are in a--
A. Little rack right next to the time clock.
Q. Are those time cards used to actually pay the
[page 26]
employees?
A. Yes.
Q. Okay. So when they clock in, they're being paid?
A. Yes.
Q. And they clock in as soon as they walk in the room?

A. As soon as they walk in the room, they clock in.
Q. Okay. So do they do that before they put -- before they go to the kiev room?
A. Most people, out of convenience when they come in, they will pick up their uniform as they walk to the maintenance shop and punch in, but that's certainly not mandated, you know, come in, punch in, get suited up, what you need.
Q. So if they come into an entrance on the -- this is the St. John side on the lower part of the diagram number one?
A. Correct -- no, actually, on the lower level, there isn't an exit, you have to go to the upper level which would be number two.
Q. All right. In some cases, they may punch in and then go to the kiev room and sometimes they may go to the kiev room and then punch in?
A. Correct.
Q. The other items -- do they get anything else from the kiev room other than the lab coat and coveralls?
A. No.

[page 27]

Q. Okay. Do they have safety glasses issued to them?
A. Yes, they do.
Q. And they have the boots issued once per year, right?
A. Correct.
Q. Where do they keep those things?
A. Most of the people keep their safety boots or their eye glasses in their own locker inside the maintenance shop. Each person has been issued a locker. Most of the time, most people wear their boots home, safety boots. Safety glasses, they do hang up in their locker for the most part.
Q. Now the other items of equipment, protective

equipment
13 that they may wear on any given day, from where do they
14 obtain those items?
15 A. A lot of people have them in their locker already.
16 Many people have -- they store it in the parts room or we
17 store it for them so we know we have a good supply of
18 safety equipment for them and that it doesn't get taken
19 home or lost or whatnot.
20 Q. How about the lock-out?
21 A. Each person was issued two lock-out devices with
22 locks. We do training once a year. And it's up to them to
23 maintain storage of them. Most people put them in their
24 toolboxes or their lockers.
25 Q. Okay. Some of the items you mentioned were, for
[page 28]
1 instance, sleeves of some kind; is that right?
2 A. Maintenance doesn't wear sleeves. That was a
3 that's not required.
4 Q. Okay. Without regard to whether it's required, do
5 they ever wear them?
6 A. I have never, firsthand, seen any maintenance guy wear
7 a sleeve.
8 Q. Okay. The hair net and beard nets, where do they get
9 those?
10 A. In the maintenance shop, on top of the
refrigerator,
11 we keep a supply in there.
12 Q. And hearing protection?
13 A. Same place, on top of the fridge.
14 Q. All right. The other items that they may
wear, there
15 is the welding mask and you named a whole bunch of
other
16 things that I didn't have time to write down --
17 A. Most of it is all in the maintenance shop or in the
18 supply room.
19 Q. So before they put those things on, the

maintenance
20 workers have clocked in?
21 A. Yes.
22 Q. So they're being paid for that time that they're
23 putting on that type of equipment, right?
24 A. Yes, unless -- for the most part, I can say yes. If a
25 guy comes in early and he wants to go down there and get
[page 29]
1 all the stuff first, that's his choice, but most people
2 come right in and punch in and then go do their thing.
3 Q. Stands to reason better to get paid for putting this
4 stuff on than not getting paid, right?
5 A. If that's your preference, yeah, I can see that.
6 Q. What do you do, are you salaried or are you hourly?
7 A. I'm still hourly. It changes from day to day.
8 Sometimes I forget to punch in until 15 after and then
9 punch in, but most times, I grab it on the way up.
10 Q. But if you remember to do it, you make it your general
11 practice to punch in before you round up the personal
12 protective equipment that you need to wear for the day,
13 right?
14 A. General practice, I would -- no, I can't say. It
15 changes every day. It doesn't really matter to me, it's
16 only a minute or two anyways.
17 Q. All right.
18 A. There are days I walk through the compressor room on
19 the way to the maintenance shop to do rounds and it's no
20 different than walking the other way and I punch in and I
21 go get my uniform, so --
22 Q. All right. Generally, as soon as you enter the
23 maintenance room to arrive to work, you make it your
24 practice to punch in first thing, right?
25 A. Correct.
[page 30]
1 Q. Okay. And as far as you know, is it generally the
2 case that of the -- let's take the 16 men on the first
3 shift, do they generally make it their practice to punch in

4 as soon as they walk in?
5 A. Generally, the first thing they do is punch in, right.
6 Q. Okay. Now at the end of the shift, do the 16 men on
7 the first shift generally -- at the end of the shift, they
8 take off whatever they're wearing in terms of safety gear,
9 right?
10 A. Correct.
11 Q. Take it off right there in the maintenance locker
12 area?
13 A. Yes.
14 Q. And some of it, they -- some of it, they return to--
15 they put the equipment somewhere that they're not going
to
16 take home?
17 A. Yes, most of the people put their personal protective
18 stuff in the locker. Lab coats and stuff, on the way out
19 the door, they throw it in the basket.
20 Q. Is the basket right there in the maintenance area?
21 A. It's about 35, 40 feet outside the door.
22 Q. Which direction? Show me on Exhibit 1.
23 A. Here is the maintenance door. Down at the bottom of
24 these stairs here, there's a basket usually located.
25 Q. All right. Why don't you just put a square where the
[page 31]
1 basket is.
2 A. Okay.
3 Q. That's an X, but put a square around the X.
4 A. And there is also one here, too.
5 Q. All right. The X with the squares are the two
6 baskets.
7 Okay. So they walk out the maintenance door and
8 drop their coats in there?
9 A. Right.
10 Q. And everything else goes in the locker?
11 A. Yep.
12 Q. Anything they throw away each day?
13 A. Hair nets, ear plugs, they throw out.

14 Q. And there's a trash barrel somewhere?
15 A. In the maintenance shop.
16 Q. Now do they do that -- do they take all this equipment
17 off that they're wearing, whatever equipment they're
18 wearing, do they take it off before or after they clock
19 out?
20 A. Most people do it -- well, they take it off before
21 they clock out. A lot of people punch out and the last
22 thing they will take off after they have punched out is
23 their coat, and as they're walking out the door, they throw
24 it in as they're leaving the building.
25 Q. But the other items, they take off, put in the locker
[page 32]
1 or wherever else they might return it?
2 A. Correct.
3 Q. Do they return anything to the parts room?
4 A. No, most of the stuff is all interior in the shop. At
5 times, I'm sure they have.
6 Q. But they take it off, stow it in their locker or
7 wherever they're stowing it and then clock out, and on the
8 way out, they will drop their coveralls in the baskets,
9 right?
10 A. I would say the majority of the time, yep.
11 Q. All right. Do the maintenance guys ever wear gloves?
12 A. Mostly leather gloves if they're doing any type of
13 work with sharp instruments or stuff like that.
14 Q. Are those issued by the company?
15 A. Yes.
16 Q. Where would they get those?
17 A. Right in the maintenance shop, I have some in my
desk,
18 or down in the parts cage.
19 Q. Why hasn't the company documented or made lists or
20 anything of what safety gear a maintenance worker should
21 use for each particular kind of job, why not do that in
22 some sort of written form?
23 A. It is in written form now. There was a time, possibly

around a couple years ago, that -- when I took the position as supervisor, I couldn't locate any documentation on that.

Exhibit 13

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	) CV-00-371-P-C
vs.	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30(b) (6) DEPOSITION of BARBER FOODS, INC. (Thomas A. Page), taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 13, 2001, commencing at 10:15 A.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine

[page 71]

A. Yeah, it's my expectation that items that are given out would be checked off, yes, either outgoing or incoming.
Q. What I mean to say is: As between, say, Sharon Jenkins and Helen Lamphier, either of them could check out those articles?
A. Yes. And if one of those two ladies were absent, somebody would be handing them out in their place.
Q. Okay. Now is there typically a line at the cage --at the start of a shift to get some -- to obtain these items from the cage, not just these items, but also the more routine items such as the hair nets and the gloves?
A. It depends. Two or more people would constitute a line. Usually there is no more than two or three or four people traveling by. You typically don't have large crowds there at the window.

16 Q. How do you know that?
17 A. I pass through on a pretty regular basis.
18 Q. Well, do you -- what do you do at the beginning of the
19 shift, how do you get ready for the start of the shift?
20 A. I have a series of meetings which I attend. They
21 typically start at 2:45 and we do a prep meeting, getting
22 an overview from first shift on any issues or information
23 that I would need.
24 Q. And who do you meet with typically?
25 A. I meet with my counterpart on first shift, my two
[page 88]
1 MR. WHITTIER: I can testify. I work with the
2 numbers all the time.
3 Q. Okay. We will hold off on that for a bit. Now in the
4 cage -- at the cage, is there -- is it just one open window
5 or are there two windows, one for each person in the cage
6 or--
7 A. There is one large window.
8 Q. Okay. And when there is -- when there are
9 employees -- when there is a number of employees there,
do
10 they generally line up in order to get to the window to
11 receive their equipment?
12 A. The associates pass by the window in a -- I would call
13 it a thin screen. They don't all go at once. Some people
14 have a tendency to want to be earlier than others. If you
15 walk by, it would be typical to see two or three people,
16 perhaps, passing by. Sometimes they don't even break
17 stride. And bear in mind there are two ladies at the
18 window, it's relatively wide, both handing out items.
19 Q. Okay. So it's your testimony that there's hardly ever
20 more than two or three employees --
21 A. I'm sure there are at times, I'm sure there are
at
22 times, but when I walk by, it's -- you have like a thin
23 person stream that is just constantly going by and you
24 might see three or four people backed up at the window,

but
25 they walk by in a pretty regular fashion.
[page 99]
1 period may go on as long as three weeks. Two weeks would
2 be typical.
3 Q. Okay. During that process, they're showing them how
4 to use the-
A. Absolutely.
6 Q. This is one of those where you knew what I was going
7 to say. The personal protective equipment and the
8 sanitation clothing?
9 A. Yes, that's correct.
10 Q. Under what circumstances, during a work shift, are
11 hourly wage employees required to clock out or otherwise
12 not compensated?
13 A. At the end of the shift, they will clock out as
14 they're leaving the production floor. Now while there are
15 many clocks, they just punch out on their way out.
16 Q. Do they punch out at the same clock that they punched
17 in on?
18 A. No, typically not, unless the clock is programmed to
19 do so. At the top of the stairway, there's an out clock,
20 and at the top of this stairway, there's an out clock, and
21 the associates typically punch out on clocks that are
22 stationed as they're leaving the floor.
23 Q. Okay. There are only two out clocks?
24 A. We can -- there are two clocks that are always set for
25 out. We can set additional ones as needed.
[page 100]
1 Q. Okay.
2 A. Two are set all the time, I believe.
3 Q. But typically, all the employees clock out on those
4 two clocks?
5 A. Primarily those two.

6 Q. Okay. All right. Now is there any circumstances
7 during the course of a shift in which employees are
8 required to clock out?
9 A. Only when they are -- only when they are finished
10 work. When they leave the production floor with no
11 intention of coming back, that's when they punch out.
12 Unless -- second shift is a little different than first
13 shift because, typically, we don't have people leaving,
14 punching out, and then coming back to say go see a
lawyer
15 or something of that nature because usually working hours
16 are over for professionals at that time.
17 Q. I wish that were true.
18 A. It's possible that somebody could leave and go --
19 Q. May be a doctor.
20 A. But it's possible that an associate had spoken to
21 their lead and say, gee, I have got an aunt coming in from
22 New York, I need to go home for two hours. They would
23 punch out. Then when they come back, they would – and
24 they would use an out clock. And when they came back,
they
25 would punch in in the area where they would be returning.
[page 102]
1 one of them right there.
2 Q. I will ask Mr. Bickford. But when an employee has to
3 go see the nurse during a shift, do they clock out?
4 A. No.
5 Q. Okay. They do that on the clock?
6 A. They just go.
7 Q. Is it regardless of the reason?
8 A. If they need to see the nurse, it shouldn't really
9 make any difference, I wouldn't think.
10 Q. Well, I mean, are they permitted to leave during the
11 course of the working time other than during their meal
12 break or rest break?
13 A. Sure, I mean they might very well be set up to go see
14 the nurse at 5:30, for example.

15 Q. From whom -- who sets it up, from whom do they have to
16 get permission to see the nurse?
17 A. The crew lead.
18 Q. The crew lead?
19 A. Or their line lead. I'm going to use the generic
20 term, from their supervisor.
21 Q. Okay. I take it they do not typically -- you do not
22 typically make that arrangement?
23 A. No, the person to whom they report makes the
24 reservation.
25 Q. Okay. Do you know whether or not the leads generally
[page 103]
1 require employees to see the nurse -- if they have to see
2 the nurse, that they require them to do it during their
3 meal breaks or their rest breaks rather than during
4 production time?
5 A. Typically, if, for example, it occurs in their rest
6 break, which it could, if that's the only open slot, we
7 would typically give them the extra time. And typically,
8 we do not -- lunch falls later for us, lunch doesn't begin
9 until 7:00 o'clock, so that my associates would not be
10 seeing the nurse at lunch time.
11 Q. Because it's too late?
12 A. The nurse is gone at 6:3 0. And as a practice, we
13 don't make appointments, I don't believe, on first or
14 second shift during lunch hour.
15 Q. All right. Okay. Do you know how much time it takes
16 for production employees, typically, to -- how much time
17 prior to the beginning of their reporting -- well, let me
18 ask you this first. Strike that.
19 For the second shift which starts at 3:45,
20 setting aside the one line that starts a bit earlier now,
21 in order to be ready -- the 3:45 P.M. start time, is that
22 the time when the chicken products start rolling on the
23 line and employees are supposed to be ready to perform
24 whatever work function they have at the beginning -- at

25 the -- whatever function they have with respect to the
[page 115]
1 and so forth. I find them equally vocal.
2 Q. So you don't believe it's true that the Vietnamese and
3 the Cambodians and the Laotians are generally very
hesitant
4 to register any sort of complaint to the company?
5 A. People that want to come to my office, I can think of
6 many different nationalities, and I don't see a lack of
7 Vietnamese or Cambodians and so on and so forth. It's not
8 as though native-born American associates are the only
9 people that come see me, absolutely not.
10 Q. When an employee does go to either the medical office
11 or to the restroom during the course of a shift, do they
12 swipe their card or not?
13 A. No, they do not.
14 Q. All right. Now when they go to the restroom, though,
15 they do have to remove their sleeves and their rubber
16 gloves and the cotton liners and their lab coat?
17 A. Yes.
18 Q. And the hearing protection?
19 A. Well, that's up to them whether or not they take the
20 hearing protection and their hair net off. To me, I would
21 say that's irrelevant.
22 Q. But they are required to take off what?
23 A. Definitely have to take your coat off. You must hang
24 that up on a hook on the outside of the door.
25 Q. And definitely have to take off --

Exhibit 14
Deposition of: Helen Lamphier -- 8/15/01.

1.IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MAINE
3
4
5 ABDELA TUM, et al.,)
6 Plaintiffs) Civil Action Docket
7 v.) No. : CV-00-371-PC
8 BARBER FOODS, INC.,)
9 d/b/a BARBER FOODS,)
10 Defendant)
11
12
13
14 DEPOSITION OF HELEN LAMPHIER, taken pursuant
15 to notice dated August 9, 2001, at the law offices of
16 William Nugent, 75 Pearl Street, Portland, Maine, on
17 August 15, 2001, commencing at 10:11 a.m., before
18 Jennifer A. Ridenour, a Registered Professional
19 Reporter, a Notary Public in and for the State of Maine.
20
21
22 APPEARANCES:
23 TIMOTHY B. FLEMING, ESQ., and
24 CHARLES R. DIXON, ESQ., FOR THE PLAINTIFFS.
25 GRAYDON G. STEVENS, ESQ., FOR THE DEFENDANT.

[page 31]
1 Q. What do you mean by it starts getting busy at
2 three?
3 A. Busier. More steady coming to the window.
4 Q. Can you explain a little bit more what you mean by
5 steady?

A. Well, they're coming to pick their things up. I have to stand by the window.
Q. Okay.
A. You know, you don't go and sit down because they're coming. If I went to sit down, then there would be somebody else right there.
Q. Okay. And when it's -- when it's busier, how many employees are waiting to collect their equipment from the cage?
A. Oh, there could be eight or ten.
Q. And which way -- well, maybe you can show me on Exhibit 4, which is the production floor --
MR. FLEMNG: That's not Exhibit 4. It's just Diagram 4. We didn't put them in as exhibits.
BY MR. DIXON:
Q. Diagram 4. Is the cage on the production level or is it on the lower level?
A. Lower level.
MR. FLEMING: Diagram 3.
BY MR. DIXON:
[page 34]
MR. FLEMING: No. The way that they line up, don't you mean?
THE WITNESS: Where they're lined up near the window?
MR. FLEMING: Right.
THE WITNESS: It's right along here.
BY MR. DIXON:
Q. And when it's busy, they always line up in that direction?
A. Yes. They all come from this direction around the corner.
Q. And when it's busy, how far back does the line go?
A. I have never seen it back as far as the lockers yet.
Q. So how many -- how far would you -- would you say it typically is when it's busy at the cage? How far is

17 the line when it's busy at the cage?
18 A. Maybe eight feet.
19 Q. Eight feet. How many people do you think that is
20 in that eight-foot line?
21 A. There aren't many at a time. It seems like they
22 get in their coats. Some will come up and then they'll
23 go back and get their coat. Seven or eight.
24 Q. Seven or eight people?
25 A. Yeah. I guess.
[page 80]
1 Q. The liners are outside. They pick up their
2 gloves. Okay. Now, when the next face appears at the
3 window, how long does it take you to grab those three
4 items, or four if the beard cover is necessary, and get
5 it to that person and then that face disappears?
6 A. Maybe four seconds.
7 Q. Now, the setup operators who have to actually
8 check out equipment, I take it for you working in the
9 cage, from the time you work it's the setup operators
10 for the second shift that check out with you, right?
11 A. Yes.
12 Q. Check out equipment?
13 A. Yes.
14 Q. And it's the setup operators from the first shift
15 who bring the equipment back, right?
16 A. Yes.
17 Q. Let's do the check-out first. I mean, the
18 typical -- I mean, if somebody comes up and says -- you
19 know, any setup operators comes up and says, I want, you
20 know, these two poucher numbers and a metal detector --
21 A. Stick.
22 Q. -- stick, can you give me a typical time frame
23 that it takes you to get that stuff and hand it to them
24 and they're off and on their way?
25 A. It's right there. Like that.

Exhibit 15

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	) CV-00-371-P-C
vs.	)
	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30 (B) (6) DEPOSITION of BARBER FOODS, INC. (Peter H. Bickford) and PETER H. BICKFORD, individually, taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 14, 2001, commencing at 1:45 P.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine.

[Page 72]

do remember a discussion with Mr. Whittier and Mr. Page and
myself.
Q. Okay.
A. And I said, one-and-a-half minutes, but I was including putting on that stuff and getting to the time clock is the discussion that I recall.
Q. Okay. And what was your one-and-a-half minute estimate based on?
A. Having been a production worker, I was a keel boner back in '79. I will admit, in those days, I didn't wear gloves. I still don't when I go to the production line. But we wear hair nets and I go to the production areas at least three times a week, myself, and I have to put on my

14 coat, my hearing protection, my hair net, put rubbers on
15 because I don't have treads on my dress shoes, typically.
16 And my office is outside the building and I can certainly
17 be on the production floor in less than a
18 minute-and-a-half.
19 Q. Now when you do it, do you have to go by the cage?
20 A. Yep, that's where I get my hair net and my hearing
21 protection.
22 Q. Okay. But you don't do it at the beginning of the
23 shift when all the other workers are trying to get their
24 stuff'?
25 A. Sometimes.
[Page 73]
1 Q. Do you get in line?
2 A. There's no line to get in, but I walk up to the window
3 and get what I needed.
4 Q. I have a few more questions about that, but also,
5 while I have your attention on the meeting or the
6 discussion with Mr. Page and Mr. Whittier, do you
remember
7 what they said on this subject?
8 A. There were a number of numbers or a variety of
numbers
9 tossed around. I heard two to three minutes and that
would
10 include if you had to change your footwear and times
talked
11 about at the window of anywhere from a second to
seconds.
12 And that's my experience. I frequently - - frequently may
13 be too much. On many occasions, I take tour groups
14 through -- these are people who are not familiar with our
15 clothing standards and I get my own equipment and theirs
16 and lead them to the production floor.
17 Q. How long does it take you when you do that?
18 A. Depends on how many I have to equip and instruct

them
19 about rolling the ear plugs between their fingers and
20 inserting them and so forth, but it takes very little time.
21 Q. Okay. Very little is a relative term. Do you know
22 how much time it actually takes?
23 A. 10 seconds each person.
24 Q. 10 seconds for each person?
25 A. Uh-huh.
[Page 74]
1 Q. Is this like an estimate or have you ever timed it?
2 A. Well --
3 Q. I can't imagine you have actually timed it.
4 A. No, but I can certainly have four or five people
5 outfitted in under a minute, go to the rack, take the coats
6 off, and say, here is the hair net, put it on. I have to
7 give them a little education about ear plugs each time
8 because they may not be familiar with it, so I do that as a
9 group. They all have them in their hands and I tell them
10 about the decibels and --
11 Q. Okay. Do you remember anything else said at these
12 discussions with Mr. Page and Mr. Whittier?
13 A. Concerning the time that it took?
14 Q. Yes.
15 A. No.
16 Q. Were there any other discussions regarding the time it
17 takes you to put on or take off the clothing, equipment or
18 gear?
19 A. Yes, not with that group, but I have had
discussions
20 with my boss, with Mr. Stevens.
21 Q. Okay. Your boss meaning Mr. Haggerty?
22 A. Yes.
23 Q. Were those discussions privileged or not, do you
know?
24 A. Anything -- anything I discussed with Mr. Stevens, I
25 guess, is.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFFS' STATEMENT OF RESPONSE TO BARBER FOODS' MATERIAL FACTS

Plaintiffs dispute the following assertions and material facts presented by Barber Foods in its Statement of Material Facts (Numbers correspond to Barber Foods numbering; additional numbers contain other information and refer to other evidence pertaining to the issue of fact in question.).

3.3 The "buffer period" described by Barber Foods, whereby employees may clock in up to six minutes before or after the start of their shift, is not actually put into practice at Barber Foods. To the contrary, employees understand that they must be ready to work at the time their shift is scheduled to begin. Ex. 1, Snow Depo. at 20; Ex. 2, Florendo Depo. at 11. Furthermore, employees understand that they may not punch in six minutes before the scheduled start of their shift. Ex. 3, Mekonen Depo. at 17. Some employees, while required to be ready to work at the beginning of their shift, are not permitted to punch in until several minutes after their' shift begins. Ex. 3, Mekonen Depo at 17-18, 26. Ex. 12, Barber Foods Associate Handbook does not, provide for such a buffer period. Ex. 12, Barber Foods Associate Handbook at

14, 17; Ex. 11, Page Depo. at 104-05; Ex. 10, [page 2] Bickford Depo. at 44. The Handbook also states that "Attendance is the starting point of performance; therefore, it is weighed heavily in performance considerations.". Ex. 12, Barber Foods Associate Handbook at 17. A previous iteration of Barber's employee manual stated that employees had to show up 1/2 hour before the shift to have all gear on. Ex. 4, Levesque Depo. at 13.

4.1 Barber Foods has not submitted credible evidence that its employees are paid for an extra 5 minutes of travel time per break.

4.4 Sanitation associates on the third shift are not paid from punch-in to punch-out. Ex. 22, Howard Answers to Interrogatories 4-5.

5.2 In addition to a lab coat, hairnet and or beardnet, earplugs, and safety glasses, employees. are required to wear some combination of following gear: vinyl gloves, cotton glove liners, vinyl. aprons, sleeve covers, bump hats, back belt, steel-toed boots, raw pants, pelletizing gloves, tool clip, set-up tools, lockout-tagout equipment, hose nozzle, and steel mesh gloves, Ex. 2, Florendo Depo. at 5-9; Ex. 11, Page Depo. at 79. Also, employees may obtain additional' gear, which is not required. by their position, such as cotton glove liners or cold weather jackets to stay warm during the work day, or back belts, aprons, or sleeve covers in order to stay safe and sanitary. Ex. 5, Tum Depo. at 19; Ex. 3, Mekonen Depo at 5-7; Ex. 2, Florendo Depo. at 9-10.

5.2(a) Barber employees must follow USDA and safety rules detailing the manner of their dress, including requirements to wear clean white coats and hair nets in the production area and the prohibition against wearing aprons and or white coats in toilet areas. Ex. 14, Barber 'Foods Employee Handbook at 25; Ex. 12, Barber Foods Associate Handbook at 28.

5.2(b) "We are convinced that the company will be most successful when all associates are working safely in a safe environment." Ex. 14. Barber Foods Employee Handbook at

23. "Safety in what [page 3] we do is as important as anything we do." Ex. 12, Barber Foods Associate Handbook at 25; Ex. ii, Page Depo. at 117. ("anything we can do to make somebody's stay at Barber Foods more pleasant, it's a benefit to everybody.")

5.2(c) "While performing the duties of this job, the employee regularly works near moving mechanical parts and is regularly exposed to extreme cold. The noise level in the work environment is usually loud" Ex. 15, Job Description for Production Worker, at I "Ensures all equipment is sanitized according to State and Federal regulations. . . . Works directly with hazardous chemicals and equipment.... While performing the duties of this job, the employee is regularly exposed to toxic or caustic chemicals. The employee frequently works near moving mechanical part. The employee is occasionally exposed to extreme cold. Must wear protective clothing, eyewear, and earwear. The noise level in the work environment is usually loud." Ex. 16, Job Description for Sanitation Worker at 1-2. "While performing the duties of this job, the employee is frequently exposed to extreme cold. Must wear protective clothing, eyewear, and earwear. The noise level in the work environment is usually moderate." Ex. 17, Job Description for Set-Up Operator, at 2.

5.2(d) Protective equipment such as hair nets, beard nets, and gloves are primarily used to protect the chicken products rather than to protect the employee. Ex. 6, Shaw Depo. at 19; Ex. 2, Florendo Depo. at 26.

5.4 Employees at the supply cage dispense hairnets, beardnets, gloves, earplugs, Scissors, pelletizing gloves, plastic sleeves, aprons, as well as items such as cook codes, metal detector sticks. Ex. 7, Lamphier Depo. at 7, 13-14, 20-22.

5.4(a) The bulk of the employees on second shift show up between approximately 3:00 and 3:30 p.m. Ex. 7, Lamphier Depo. at 30, 36 [page 4]

5.6 Before institution of the cage, in approximately August 1999, employees collected various equipment from bins and racks. Some employees took approximately 2-4 minutes to collect the required equipment and gear, while others had to wait longer than after institution of the supply cage. Ex. 4, Levesque Depo. at 12, 25, 33; Ex. 8, Radovic Depo. at 8; Ex; 5, Tum Depo at 61;Ex.' 2, Florendo Depo. at 6-7. When the cage first opened, it was only staffed by one worker, and the waits to collect equipment were longer than they are now that the supply cage is sometimes staffed by two employees. Ex, 2, Florendo Depo. at 55-57.

6.1 In addition to the gear listed by Barber Foods (Ex, 13, Barber Foods Statement of Fact at 7), some rotating associates are required to wear gloves. Ex. 5, Tum Depo. at 10. "Luggers," employees who may lift items weighing up to 40 pounds, are required to wear .a back belt. Ex. 18, Barber Answers to Interrogatories at 2; Ex. 11, Page Depo. at 39-40.

6.2 In addition to the gear listed by Barber Foods (Ex. 13, Barber Foods Statement of Fact at 7-8), set-up operators are also required to have tools, and are required at times to ,wear sleeves, rubber gloves, and or pelletizing gloves. Ex. 2, Florendo Depo. at 9; Ex. 9,•Olszynski Depo. at 5, 9-10.

6.3 In addition to the gear listed by Barber Foods (Ex 13, Barber Foods Statement of Fact at 8), meatroom employees are also required to wear bump hats. Ex; 4, Levesque Depo. at 8.

6.4 In addition to the gear listed by Barber Foods (Ex. 13, Barber Foods Statement of Fact at 8), shipping and receiving employees are required to wear back belts. Ex. 1, Snow Depo. at 13, 24. Because these employees must go through the production floor to punch in, they are required to obtain and put on the same gear as rotating associates. Ex. 1, Snow Depo. At 9-10.

6.7 The requirement that employees utilize various pieces of personal protective equipment is designed to address hazards associated with working at chicken processing plants such as Barber [page 5] Foods. Ex. 19,

Barber Foods Safe Work Field Compliance Manual (sections describing "purpose," and "protective equipment usually considered"). Primarily, however, protective equipment such as hair nets, beard nets, and gloves are primarily used to protect the chicken products rather than to protect the employee. Ex. 6, Shaw Depo. at 19.

6.8 Additional protective clothing, equipment and gear are worn by, employees and these items also benefit the employer. Ex. 11, Page Depo. at 117.

7.3 Employees often do not wear their issued steel-toed boots home but, rather, don and doff these boots every work day. Ex. 4, Levesque Depo. at 8, 11, 21.

8.1 Plaintiffs do not dispute Ex. 13, Barber Statement of Material Facts ¶8. 1. In addition, crew and line leads are responsible for monitoring time punch accuracy and attendance. The leads are supposed to check the computer daily to check associate punches. They also receive a weekly printout of the associates' daily clock punches. The leads are also responsible for monitoring and entering into the computer any time off, such as excused or unexcused absences, arriving late or leaving early, leaves, vacation, paid time off, etc. Ex. 18, Barber Answers to Interrogatories at 5-6.

8.2 There are numerous time punch clocks spread throughout the Barber facility. Employees simply swipe their individual card through the machine, much like a credit card, and the machine registers the punch. Ex. 11, Page Depo. at 11-12, 17, 21.

8.4 Sanitation associates on the third shift are not paid from punch-in to punch-out. Ex. 22, Howard Answers to Interrogatories 4-5.

10.2 While irrelevant to the actual work setting experienced by Barber Foods employees, it takes approximately between 1-2 minutes to walk directly from the building entrance to the punch clock. Ex. 3, Mekonen Depo. at 18-19; Ex. 4, Levesque Depo. at 38. [page 6]

10.3 There often are hues at the supply cage containing from 5 to 20 employees. Typically, an employee at the back of one of these lines takes from 2 to 8 minutes to get to the supply cage to collect his or her equipment. Ex. 5, Tum Depo. at 30-32; Ex. 3., Mekonen Depo. at 11-14; Ex. 9, Olszynski Depo. at 19. During the busier periods at the cage, when the bulk of the employees come to pick up their gear, there typically are 8-10 people in line, and sometimes, there are more than 15. Ex. 7, Lamphier Depo. at 31, 37, 39-42. Whether or not there is a line, delays are caused when the cage employees socialize or otherwise do no pay attention to employees' waiting for their equipment. Ex. 2, Florendo Depo. at 15-16, 56.

10.3(a) When the bulk of the employees come to the cage to get their gear, the area outside the cage is often extremely crowded and busy, with employees and temporary employees waiting to get their gear intermingling with employees fresh off of working on the previous shift walking the opposite direction. Employees often complain about why the line at the cage does not move faster. Ex. 7, Lamphier Depo. at 36, 40, 66-67, 77.

10.3(b) Usually, there are also lines or crowds of people which employees must navigate to get the white coats and glove liners from the racks and bins down the hail from the supply cage. Ex. 2, Florendo Depo. at 13; Ex. 9, Olszynski Depo. at 18. Employees sometimes' have to wait several minutes to get their white coat and glove liners. Ex. 2, Florendo Depo. at 13-15, 21.

10.4 Barber Foods' employees typically require approximately between 8 and 36 minutes from the time they enter the Barber Foods facility to obtain and don the necessary clothing, equipment, and gear, to be ready to punch in and begin their shift. Approximately between Sand 10 minutes,: is spent strictly donning the required gear. Ex. 5, Tum Depo. At 27; Ex 8, Radovic Depo. at 11; Ex. 3, Mekonen Depo. at 11-14; Ex. 2, Florendo Depo. at 21-22; Ex. 9, Olszynski Depo. at 17-2 1; Ex. [page 7] 11, Page

Depo. at 118-19. Some employees were told to arrive at work between 1.5 arid 30 minutes before the scheduled start of their shift. Ex. 24, Lamarche Answers to Interrogatories at 2-3; Ex. 20, Bearce Answers to Interrogatories at 2-3.

10.4(a) There is often a line to punch in to work. It typically talçs between a couple minutes and seven minutes to reach the front of one of these lines and punch in, Ex. 5, Tum Depo at 50-51; Ex. 8, Radovic Depo. at 9-10; Ex. 3, Mekonen Depo. at 11.

10.4(b) Any time employees spend socializing or otherwise using time for their own benefit would be in addition to the time it takes to prepare for the shift. Ex. 9, Olszynski Depo. at 29 ("No, I don't have time [to go to the cafeteria or somewhere else just to socialize or have something to eat: or something to drink].").

10.4(c) Because of the high volume of people traffic, employees must often spend significant amounts of time navigating the hallways between the supply cage, the area where coats and glove liners are kept, their lockers, and the punch clock. Ex. 2, Florendo Depo. at 17-18; Ex 9, Olszynski Depo. at 30 ("Sometimes we have so many people you have to sneak between people.").

10.6 Rotating associates typically spend approximately between 5.and 17 minutes obtaining and donning the necessary sanitary and protective clothing, equipment, and gear. This equipment is typically not donned while walking. Ex. 5, Tum Depo. at 27-29; Ex. 3. Mekonen Depo. at 1.3-14; Ex. 8, Radovic Depo. at 11-12.

10.6(a). Some rotating associates must wait an additional 6-7 minutes at the production area for their supervisor to give the job assignment before they are permitted to punch in. Ex; 3, Mekonen Depo. at 17-18, 26.

10.7 Rotating associates typically do not doff their gear while walking. Some may begin doffing [page 8] their gear while walking from the punch clock, but complete their doffing at the laundry or disposal bins. The crowds of people in the stairwells and hallways make doffing gear while

walking Impractical. Ex 5, Tum Depo. at 46; Ex 8, Radovic Depo. at 13-15; Ex..3, Mekonen Depo at 19- 22:

10.7 (a. Rotating associates must spend between 7 and 12 minutes' after swiping out to doff their gear, launder, throw away, or store this gear, and exit the building. Ex. 3, Mekonen .Depo at 19; Ex. 8, Radovic Depo. at 12; Ex. 5, Tum Depo. at 38-39.

10.8 Set up operators spend approximately from 15 to 20 minutes walking in the front door of the building for set-Up operators to get their white coat, glove liners, and their gear from' the supply cage,' including a wait of several minutes to get a coat and typical wait of approximately between two and five minutes to obtain gear from the supply cage. Ex. 2, Florendo Depo. at 21-22; Ex. 9, Olszynski Depo. at 1,7-21. It takes approximately 2-3 minutes to walk to walk from supply cage to the locker room. Ex. 2, Florendo Depo. at 21; Ex. 9, Olszynski Depo. at 30. It takes another approximately 10 minutes for set-up operators to don their equipment at their locker. Ex. 2, Florendo Depo. at 22-23; Ex. 9, Olszynski Depo. at 25-2 7. It takes another approximately 2-3 minutes to walk from the locker room to' the packout-1 punch clock. Ex. 2, Florendo Depo. at 25; Ex. 9, Olszynski Depo. at 30.

10.9 Prior to punching out, set-up operators return to the cage any items they had checked out earlier. Often, set-up operators must wait for a cage employee to arrive so that they may return these items, which takes approximately 4-5 minutes. On the occasions when there are employees present working at the cage, it takes approximately one minute to return these items. Ex. 2, Florendo Depo. at 41-43; Ex. 9, Olszynski Depo. at 41-42.

10.10 Set-up operators typically doff most of their gear after reaching the bottom of the stairs after [page 9] punching out. Ex. 2, Florendo Depo. at 31, 34. 38. It typically takes set—up operators approximately one minute to doff their white coats. Ex. 2, Florendo Depo at 39-40. There are usually crowds around the bin where white coats are laundered, requiring employees to wait approximately 3 minutes. Ex. 2,

Florendo Depo. at 40. It takes approximately 3 minutes to walk from the cage to the locker room. Ex. 2, Florendo Depo. at 43. Once at the locker, it takes set-up operators at least 5 to approximately 10 minutes to doff and store their gear, and then an additional 3 minutes to walk from the locker room to the exit. Ex. 2, Florendo Depo. at 43-44, 54-55; Ex. 9, Olszynski Depo. at 42-43. The crowds of people in the stairwells and hallways make doffing gear while, walking impractical. Ex. 2, Florendo Depo. at 38.

10.11 It takes meatroom employees approximately 15-20 minutes to prepare for their shift, including approximately 8-9 minutes strictly to obtain and don equipment. Ex. 4, Levesque. Depo. at 14, 25-27, 33 Sometimes, additional waiting time resulted when employees did not have access to the supply area. Ex. 4, Levesque Depo. at 16-20.

10.12 Meatroom employees take approximately 5 minutes between the time they clock until the time they leave the Barber plant, assuming they do not have to wash their boots. The total time between clock out and exit is approximately 10-20 minutes if the meatroom employee has to wash his or her boots. Meatroom employees wash their boots at least half of days worked, because of their heavy exposure to chicken grease. Aside from doffing gloves while walking, meatroom employees typically walk down the Stairs to the first floor after punching out, and then doffing their, gear. Laundry and disposal bins were located at the bottom of the stairs. Meatroom employees punch in and out on the meatroom clock. Ex. 4, Levesque Depo. at 28-30, 35, 37-38 [page 10]

10.13 Shipping and receiving employees spend approximately 15 minutes preparing to perform shift work before their shift begins, including approximately 10 minutes obtaining and donning necessary gear. About once per week, shipping and receiving employees must navigate groups of employees from the previous shift, which adds another 1-2 minutes of pre-shift time. Ex. 1, Snow Depo. at 10, 18-19, 25, 27-28, 30, 37.

10.14 Shipping and receiving employees typically spend between 10 and 12 minutes after punching out to return through the production floor, doff their gear, launder, dispose of or store gear, and go to the building exit. It takes approximately 5-6 minutes just to doff and dispose of, launder, or store gear. Ex. 1, Snow Depo. at 10, 21, 24.

10.15 When maintenance employees enter the production floor, they are required to wear a bump hat, coveralls, back belt, tools, safety glasses, ear plugs, hair net, work shoes or boots, and a beardnet (if the employee has a beard). When maintenance employees are not scheduled to enter the production floor, they are required to wear safety glasses and steel-toed boots. Maintenance employees are required to obtain much of their required gear before clocking in. Typically, it takes approximately 10-15 minutes for a maintenance employee to walk from the entrance of the building, go to a locker, don a bump hat, coveralls, back belt, tools, safety glasses, and shoes, go to the supply area in the maintenance shop, get equipment from the supply area, and double check tools. Ex; 20 Bearce Answers to Interrogatories at 3-4; Ex. 6, Shaw Depo. at 19-20.

10.16 Maintenance employees typically spend approximately. 20-25 minutes taking off clothing, equipment, and gear, putting equipment away in a locker, throwing away or laundering equipment, throw away or launder equipment, and cleaning tools before punching out. Ex. 20, Bearce Answers to Interrogatories at 4. [page 11]

10.18 Sanitation workers must obtain their protective and sanitary clothing, equipment, and gear, — white coat, hairnet, beardnet, rubber gloves, glove liners, sleeve covers, earplugs, safety glasses, hard hat; back belt rain gear, and rubber boots — from the supply cage, the locker, and the coat area, and don this equipment prior to punching in. Ex. 22, Howard Answers to Interrogatories at 3-4.

10.19-10.20 It usually takes sanitation workers 5-10 minutes to put on all the required equipment pre-shift, and approximately 17-22 minutes between entering the building

to having all their equipment on. After punching out, it typically takes sanitation workers approximately 12 minutes to walk to the locker room, doff their equipment, and walk to the exit, including 8 minutes for doffing alone. Ex. 22, Howard Answers to Interrogatories at 4-5.

11.1 - 11.2 Employees at the end of the production line get approximately 4 minutes less break time than employees at the front of the production line, because they, have to 'wait for the product they have to work on before they can leave. Some employees have been denied their full 30-minute lunch break. Ex. 3, Mekonen Depo. at 24-25, 27-28; Ex. 4, Levesque Depo. at 39-41; Ex. 2, Florendo Depo. at 48.

11.3 Barber Foods suggests to employees that they use their lunch break or other break to use the restroom. Ex. 11, Page Depo. at 113. Some employees have repeatedly been denied paid breaks. Ex. 1, Snow Depo. at 33. Some employees' lunch breaks have been cut short, and some employees believe that some of their lunch breaks seem shorter than 30 minutes. Ex 4, Levesque Depo. at 39- 41; Ex. 2, Florendo Depo. at 48. Employees generally spend between 6-10 minutes — sometimes significantly more — of their break time doffing, walking to and from the break area, and redonning 'their equipment. Ex. 22, Howard Answers to Interrogatories at 4-5; Ex. 21, Carey Answers to Interrogatories at 4; Ex. 24, Lamarche Answers to Interrogatories at 4-5. [page 12]

12.2 - 12.5 Members of management — specifically, Zareh Derhagopian and Doug Goodwin — have "recommended" that employees visit the nurse's office during lunch break. Ex. 4, Levesque Depo. at 42. Employees on second shift typically must visit the nurse before their shift begins and before they clock in. Employees are not paid for the time they spend waiting for and visiting the nurse. Ex. 5, Tum Depo. at 52-53; Ex. 9, Olszynski Depo. at 47-49; Ex. .23,. Huntley_Answers to Interrogatories at 3.

13.1-13.2 Barber Foods is, and should be, aware that its policies concerning pre-shift and post- shift activities, meal

breaks, and medical appointments complained of by the plaintiffs failed to comply with the Fair Labor Standards Act. Peter Bickford's attendance at seminars and his review of periodicals dealing with employment law issues, including wage-and-hour matters, is or should. have indicated that Barber Foods' wage and hour policies are not in compliance with the law. (13, Barber Foods Statement of Fact at 19-20).

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Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*
	*
Plaintiffs,	*
	*
V.	*
	*
BARBER FOODS,	*
	*
Defendant.	*

DEPOSITION of KEVIN SNOW, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 23, 2001, before Carla Culver, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.

[Page 9]

1 help out in the cooler, then I had to wear the blue ones.
2 Sometimes if a -- you know, it depends how much chicken
3 they had to stack in the cooler cause a pallet fell over
4 or something, you know, it all depends.
5 Q So unless you were on the production floor, am I correct
6 that the items that you had to wear when you were not on
7 the production floor were steel-toed boots, a bump hat and
8 a back belt?

A Primarily, yes.
Q Was there other stuff that you would normally on a typical
day wear to work at Barber Foods in shipping and receiving
not associated with the times that you went onto the
production floor? Do you understand what I'm saying?
A No.
I'm trying to figure out -- if you had a day in dry goods
when you never went on the production floor, you come to
work, you come to work in dry goods, and you never get
sent to the production floor so you don't have to put on
the lab coat or the hairnet or that stuff, what do you
have to put on on your normal typical day other than your
steel-toed boots, your bump hat and your back belt?
A What about regarding punching in and out?
But that's not putting something --
A But the time clock for shipping and receiving is on the
production floor.

[Page 10]

Q So you would actually have to put on a lab coat, a
hairnet, --
A Earplugs and hardhat.
Q -- and earplugs every day in order to go and punch in?
A Yes.
Q And then go and punch out?
A And then you'd go back -- and then to punch out, correct.
Q Maybe the best way for me to approach it then is to --
let's start your typical routine from the time you get
there in the morning --
A Okay.
Q -- until you're all punched in and go to wherever you're
going to go work, and then I'll go back and cover what
you're wearing all this time, okay?
A All right.

16 Q So what would be your -- how did you arrive at work; did
17 you walk or bring a car or what?
18 A I drove to work.
19 Q You drove to work. And what was your shift?
20 A Roughly 5 a.m. to 3:30 p.m.
21 And where did you park, out back?
22 A Yeah, I usually parked down by dry goods cause I had a key
23 to let myself in.
24 Oh you did, okay. That was going to be my question. Is
25 dry goods on the first floor or the second floor?
[Page 13]
1 Q Did they move them to the regular locker room where
2 everybody else's lockers were?
3 A Yes.
4 Q And approximately when was that, do you know?
5 A I can't remember exactly. It was before I left, probably
6 about six, seven months before I left.
7 Q In any event, whether your lockers were at the old area in
8 dry storage or in the locker room with everybody else,
9 your typical routine I take it was to come in through that
10 entrance and go to your locker?
11 A Yes.
12 Q And get what?
13 A A hardhat and back belt.
14 Q And what would you do with them?
15 A I'd put them on.
16 Q Right away?
17 A Then I'd go all the way to the back of dry goods and grab
18 -- find a lab coat. So I'd walk all the way down here.
19 And did you have lab coats in dry goods?
20 A They're in dry goods, yes.
21 What were they, on a rack?
22 A On a rack, yeah.

23 And then what did you do?
24 A And then I'd go over here and start coming upstairs and go
25 up and around up here to the first floor, walk to the
[Page 18]
1 put anything on, you didn't have to go in your locker and
2 put the steel-toed boots on, you didn't have to put the
3 coat and the hairnet and earplugs on, but you still had to
4 come over to where you normally punched in at the time
5 clock in shipping and receiving, how long typically would
6 it take you from walking through the door to just come up
7 and go to shipping and receiving and punch in, do you
8 think?
9 A Just to walk straight here, --
10 Q Yeah.
11 A -- go up, punch in?
12 Q Walk up and punch in.
13 A Five or six minutes.
14 Q And now adding what you actually did, which is go over to
15 your locker and put that stuff on and then go over and get
16 your, you know, to the rack and put your coat and your
17 hairnet and earplugs on and then go up, typically how long
18 would you say it took you from the time you entered until
19 the time you actually punched your clock?
20 A Well, combination lock on the locker, steel-toed boots, I
21 gotta' take my boots off, put 'em in, take my sneakers
22 off, put 'em in the locker, lock it back up. You mean
23 overall going up there and then going up to punch in?
24 Yeah.
25 A I'd say about ten to fifteen minutes.
[Page 19]
1 Q And refresh me cause I think I lost what you said just the
2 walking would take you if you could walk direct.

A Five or six.
Q Five or six, okay.
Say you'd add about ten minutes to that.
So you think getting the stuff that you had to get and putting it on and taking the detours that you had to take, you think it probably adds approximately ten minutes to that?
A Yeah. About five or six minutes just changing my sneakers into my boots, you know, and then walk down there is a minute-and-a-half, two minutes, and then I gotta' g halfway back up to dry goods and then go all the way up for the five and six minutes, so --.
And what did you keep in your locker?
A My hardhat -- you mean everything, even the little things?
Well the stuff that you actually had to put on every day when you came to work, you know, what type – as opposed to personal stuff, yeah.
A Well, I'm not talking personal stuff, I'm talking work stuff, you know, like magic marker, pens, thermometer -- well I didn't need a thermometer down in dry goods, but, you know, I had a taper and -- a lot of times my timecard was in my locker.
But the stuff that you had to get from your locker in
[Page 20]
order to get upstairs and punch in shipping and receiving would be your--
A Hardhat.
Q Hardhat, steel-toed boots, --
A Steel-toed boots, back belt.
Q And back belt. Actually, you know you'd have to wear the lab coat and the hairnet and the earplugs to go upstairs and punch in, right?
A Um-hmm.

10 Q But why did you have to put steel-toed boots, a hardhat
11 and back belt on first?
12 A Well if -- because I had to be ready to work as soon as I
13 punched in. I had to be ready to work. That means --
14 Who told you that?
15 A That's what I was told when I first started working
there.
16 Did anybody in shipping and receiving come in and just
17 on their coats, hairnets, earplugs, go up and punch in and
18 then come back down and throw their boots on and
hardhat?
19 A Not as far as I know, cause you had to be ready to work
as
20 soon as you got there. As soon as you punched in you got
21 -- you know, like if I was a runner, when I was running I
22 was actually running mostly for dry goods, okay, I'd run
23 stuff off the elevators, okay.
24 Yeah.
25 A And I would go in and I'd get all my stuff on, plus I had
[Page 21]
1 to have a warm coat, you know, a freezer coat pretty
much.
2 And I'd go up -- I'd get all that stuff on, go up, punch
3 in, I'd go in and grab the radio cause we had a radio
4 system for a while, and you know, even though I. wasn't
5 ready to work right away the radio was in the office, so,
6 you know, I had to wait to get that anyway.
7 Q Now were there any occasions -- did you punch any
other
8 clocks during the day before you punched out?
9 A What--
10 Q You come over here to the shipping and receiving time
11 clock to punch in at the beginning of your shift, right?
12 A Um-hmm.
13 Q And then did you punch out at the same clock --
14 A Yes.
15 Q -- at the end of the shift?

16 A Yes.
17 Q During the shift did you -- were there occasions where you
18 would punch the clock or any other clock?
19 A For a short time, but this was before '97, they said you
20 could punch out on any clock, but then they changed that.
21 So in other words --
22 A After '97 they didn't allow that any more. You had to
23 punch out the same clock you punched in on, except the
24 production. Production was any clock, but shipping and
25 receiving, they wanted us on the same clock.
[page 22]
1 Q Okay.
2 A I think the meat room and all those were all the same
3 clock, specific departments.
4 Q But there was -- so there isn't any occasion — I mean
5 like if for example we heard with production workers if,
6 you know, when they rotate the lines, in order to keep
7 track of where the laborer is going they'll swipe cards
8 during the day.
9 A Right.
10 Q It doesn't punch them off the clock, but they swipe to let
11 them know where they are. Did you guys at shipping and
12 receiving do anything like that?
13 A Only if we were leaving the premises.
14 Q Okay.
15 A Only if I was going off the property for lunch, they'd
16 make me go -- I'd go out to the production floor, punch
17 out, and then, you know, go take my stuff back off, go to
18 McDonald's, come back, put my stuff back on, go back and
19 punch in, punch back in for lunch.
20 Because you always had to use this one?
21 A Always had to use that clock.
22 Now at the end of the day, what was your routine?
23 A I would go up and punch out if I was done. Like I said,

my hours were a little flexible. If I had an hour—and-a-
half for the end of the day that was nobody coming in,
[Page 24]
Q And do you still have your bump hat on?
A Usually I'd put my hardhat on. Basically, I don't know,
it was just the common thing to do would be tie your
earplugs to your hardhat, so then you don't lose your
earplugs.
Q Did you still have your back belt on --
A Yes, back belt --
Q -- typically when --
A -- you're supposed to wear all the time.
Q Okay.
A Whether you use it or not.
Q Okay.
A But it had to be on you or else you got written up.
Q Well let me ask you, from the time that you actually
punched out then, you know, you'd swipe your card out
here
in the office, until you left the door, opened the door
and walked out and you're a free man again, typically
how
long would that take?
A Well, the walk itself is five minutes, five, six minutes,
like I said. Probably about -- taking stuff off is easier
than putting it on, obviously, so I'd say another five or
six minutes added onto the walk, so ten, twelve minutes.
So you think it's, what, four or five minutes quicker from
the clock out the door at the end of the day than it is
from the door to the clock at the beginning of the day?
[Page 25]
A Well, --
Q Use your best estimate.
A -- I would say yeah because, you know, if you're going
to
need a lab coat, you have to find one that fits. I mean
90 percent of the people there are 5-foot-6 or less. I'm

6-foot-4, I had to get a big coat. So, you know, I'd have to look for a coat that would fit me and toss it on rather than, you know, but at the end of the day I'd just take it off, throw it in the bin, you know.

Q And I know we're really parsing stuff here pretty finely, but you know, for example, can you give me your best estimate, how long does it take you to -- how long does it take you to take your lab coat off when you decided -- I'm not talking about the walking time or anything, just to take your lab coat off and throw it in the bin?

A Well, usually my lab coat's off by the time I hit dry goods because I can just walk over there and toss it in. That's why your time lapses, I can't take it off until I get down here.

So at the end of the day when you swipe out, you've got to keep it all on as you walk through production to the stairwell, right?

A Yeah.

And as soon as you get out of production, you can actually take your coat and your hairnet and your earplugs off.

[Page 27]

bin, and then the bin would be there, I'd toss it in, then I'd walk down and, you know, take my -- to open my locker, take my sneakers out, change into my sneakers, put everything in.

Q Now the same -- in the morning, did you generally do that in reverse in the morning when you'd come in? When you grab your coat and your hairnet and your earplugs, on a typical day, just as soon as you get those, you're heading for the stairs to get up to production to go punch in, right?

A (Pause)

Q In other words, you come to your locker first?

A Um-hmm.
Q And then you go to the -- over in the area of the cage where the racks were for your coat and your hairnet and your --
A Right.
-- earplugs?
A Usually everything would be in my hardhat, you know, like I said, my marker, my taper, stuff like that would be in my hardhat. So I'd carry it down there, I'd grab the hairnet, throw that on, grab a lab coat, look for a lab coat that fit, you know, put that on, my back belt would already be on, and I'd throw my stuff in and walk upstairs and punch in.

[Page 28]

Q That's what I was getting at. At the end of the day once you get off the floor and you hit the stairwell, you're basically getting your coat off and taking your hairnet and your earplugs off, so about the time you hit the bin and threw them away downstairs, you've already got them off and then it's just a question of there's the laundry bin, bang, there goes the coat, there's the trash, there goes my hairnet and earplugs. Right?
A Um-hmm.
Q At the beginning of the day when you pick up your and hairnet and coat, do you do that in reverse, sort of, well I'm on my up to --
A Pretty much.
Q -- so while I'm walking up towards the stairwell towards the floor, I'm putting my coat on, putting my hairnet on, putting my earplugs on?
A No, usually if I grab my lab coat I put that on.
Right there?
A Right at the -- where the coats were. I mean it was -- it's -- I mean cause I'd still have to take my stuff out of my hardhat, so I'd have to set my hardhat down in

order
22 to put my coat on. I really can't, you know, hold it at
23 the same time. So I'd just put my coat on, and then as I
24 -- and I'd have to put my hairnet on because it's a two
25 hand thing, I mean I don't know how -- if you ever put a
[Page 30]
1 A I didn't. Well like I said, at that time there were very
2 few people there. A lot of times -- sometimes third shift
3 would be in my way cause they'd be coming down to
break
4 right around then, and they'd come through, you know,
5 twenty-five people, whatever, they'd be filing through
6 this door. And they actually take -- a lot of them take
7 their stuff off cause it's too hot, cause they wear a lot
8 of stuff. So they take their stuff of f, and I'd have to
9 dodge some of them sometimes. But other than that, I
10 could just go and do it.
11 Q What did you -- what type of breaks -- what was your
12 normal break schedule during a shift?
13 A Usually I'd take a fifteen-minute right around 8
o'clock,
14 8 a.m.
15 Q That was paid, right?
16 A Yeah, didn't have to punch out for that.
17 And what was your next break?
18 A Lunch, that was whenever convenient. I didn't have a
19 schedule.
20 You didn't?
21 A No, not for lunch because if I'd try to take it at noon, a
22 truck would come in, and I've got to unload it and enter
23 it into the system, things like that. So they
24 automatically deducted a half-an-hour at any given time
so
25 I could take my break, you know, I could take a lunch
[Page 33]
1 punch out and punch back In, and try to make sure you're
2 within one or two minutes of a hair-an-hour or else you

get hell for it.
Q So they still -- the company -- did you often leave the premises for lunch or whatever?
A Not usually, really.
Q But on those occasions when you did, the lunch -- the half-hour deduction was made automatically?
A It was made automatically, but if I punched in and punched out they wouldn't do the half-hour deduction, so that was --
Q So they would rely upon whatever your punch in and punch out was?
A Exactly.
Q And did you have any other breaks during the day?
A We were supposed to have a ten-minute at the end of the day, but I never usually took that or never usually got that. Usually if -- usually I would get -- like Thursdays I'd never get it because I was expecting a guy, University Rubber, every week. And usually sometimes a label guy would come in late. He always came in late and drove me nuts, but --. I probably got it twice a week. Three times a week I probably didn't, or vice-versa. You know what I mean, sometimes I'd get it three times a week, you know, just depending. But that was the nature of the job,

[Page 37]

before?
A I think I have.
Q And have you put together answers to that yet?
A Yeah, I filled one of. these out before, I believe, and mailed them in, put them in yellow envelopes.
Q So you've already supplied your answers to those?
A Yes, I believe I have.
MR. STEVENS: That's all I've got.
THE DEPONENT: That's it?
MR. STEVENS: Yeah.

MR. DIXON: I just have a couple things.

EXAMINATION BY MR. DIXON:

You mentioned sometimes there were people from third shift that --

A Were in my way?

Q -- were in your way?

A Yeah.

Q How often did that happen?

A Oh, maybe once a week or so. Not much.

And where --

A Usually we would bump into each other when I'm going up and they're coming down, or when I'm down – sometimes they're already down there. Some of them took their breaks right there just to go down and rest, just to hang out by the lab coats.

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*	
	*	
Plaintiffs,	*	
	*	CIVIL NO. CV-00-371-P-C
V.	*	
	*	
BARBER FOODS,	*	
	*	
Defendant.	*	

DEPOSITION of CELSO FLORENDO, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 25, 2001, before Roxanne DiMarco, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.

[Page 5]

1 A Um-hmm.
2 Q –there's--and I'll go through everything in a minute, but
3 right now, for example, you have to get hairnets and
4 earplugs and rubber gloves, anyway, you have to get from
5 the cage--
6 A That's correct.
7 Q --every day, right? Now you didn't always have to do
8 that, right?
9 A I couldn't get it. Kind of like--Can you repeat it again?
10 Q Yeah.

A Please.
Q Right now--
A Um-hmm.
Q --you have to, at the--there may be some other things, but
at least you have to get like a hairnet and earplugs and
the--and the rubber gloves, you have to get out of the
cage every day, right?
A Correct.
Q Okay. Now that has not always been the case, right? The
cage hasn't always been there, right?
A You mean before.
Q Right. There--the cage hasn't always been there. In
other words there were--before there was the cage they had
the hairnets and the earplugs out in--in racks or bins
out--out where people could get them without having to go
[Page 6]
to the cage to get them, right?
A That's correct.
Q Okay. Do you--do you have any sense of, you know, an idea
as to when that switch was made where they actually put
the cage in and you had to go to the cage for those items?
A I could not remember the date.
Q Okay. Let me ask you, without trying to put a time on it,
the time that you say that you have to wait every day to
get all your stuff and wait in line and put it on before
you can go upstairs and--and actually punch in, do you
think it's longer since they put the cage in or shorter
since they put the cage in? Or about the same? I mean I
suppose--
A I couldn't really put the date down, you know.
Q No, yeah, I'm not talking about the--
A Yeah. Um-hmm.

17 Q --date the cage was in, I'm just saying, I take it--and--
18 and once again, don't worry, we'll get into specifics, but
19 I--I take it that one of your claims in this case is--is
20 that you--you spend a lot of time before you actually
21 punch in standing in line to get materials and putting
22 those things on before you can actually go upstairs to
23 punch in, right?
24 A That's correct. Um-hmm.
25 Q Okay. And what I'm trying to find out from you is--is
the
[Page 7]
1 time that you claim you have to do that, was that longer--
2 has that been longer since they put the cage in or shorter
3 since they put the cage in?
4 A There were time that it's longer, because you have like
5 the temporary, when they comes in, you (Indiscernible) up,
6 yeah.
7 Q Okay.
8 A (Inaudible).
9 Q Now I've got a list and I want to make sure I--I go
10 through to know where you--what you actually have to
wear
11 every day before you go up on the production floor and go
12 to work, okay?
13 A Mmm.
14 Q You have to wear a white coat, right?
15 A Correct.
16 Q And a hairnet?
17 A Correct.
18 Q Do you--do you wear rubber gloves every day?
19 A I usually pick them up in the window.
20 Q Okay. So-
21 A Every day.
22 Q --you usually do-
23 A Yes.
24 Q --pick up rubber gloves.
25 A Right.

[Page 8]
1 Q Okay. Do you wear the cotton liner? The white gloves?
2 A Yes.
3 Q Okay. So you--is it--is it normal for you to wear both
4 sets of gloves every day?
5 A Yeah, usually, because sometimes you have to help ti e
6 people when they're working on the (Indiscernible)
7 machine, because sometimes they're very slow.
8 Q Okay. Do you wear an apron?
9 A No, I don't.
10 Q Do you wear sleeve covers?
11 A You mean the white--
12 Q The--the--yeah, the little pull-on sleeve covers.
13 A No, I don't.
14 Q As a set-up operator I take it you have to wear the steel-
15 toed boots?
16 A That's correct.
17 Q And you have to wear earplugs.
18 A Correct.
19 Q Do you have to wear safety glasses?
20 A Correct.
21 Q Do you wear a back belt?
22 A Correct.
23 Q And do you wear a bump hat?
24 A Correct, yeah. That's the hard hat. That's not-
25 Q The hard hat, yeah.
[Page 9]
1 A Um-hmm.
2 And you--do you have to have a lock-out tag-out tag with
3 you every day?
4 A You mean the--Correct, yeah.
5 Q Any other tools that you--that you--I under--Let me
phrase
6 it this way. I understand that the--the floater, the
7 float, actually brings the--the toolbox for the shift up.
8 Is that right?
9 A Correct.

10 Q Okay. Other than tools that you might get from the
11 toolbox that the float brings up to the production floor,
12 do you yourself have any tools that you keep in your
13 locker or take home that you bring up to the production
14 floor every day?
15 A Yes, I do.
16 Q What are those?
17 A I've got a wrench, alien wrench, and then a screwdriver,
18 and--what's that other--scissors. A pair of scissors.
19 Q And where do you keep those?
20 A In my locker.
21 Q You keep your lock-out tag-out in your locker as well?
22 A Correct.
23 Q Is there anything else you keep in your locker?
24 A My boots. And my--my clothes that we usually wear, I
25 don't bring it home, like my vest. Usually I have a,
[Page 10]
1 yeah, the layered clothes.
2 Q Okay. So you actually wear a vest underneath your white
3 coat for warmth.
4 A Yeah.
5 Q Right?
6 A Mmm. Yeah.
7 Q Okay.
8 A Usually (Indiscernible) of them there.
9 Q And I take it you keep your hard hat and your safety
10 glasses in there too?
11 A That's correct.
12 Q Okay. How do you get to work in the morning, Mr.
13 Florendo?
14 A Second shift. I'm second shift.
15 Q How do you get to work in the afternoon?
16 A I drive my car.
17 Q Okay. You--you drive your car and park it out back at
18 Barber Foods?
19 A That's correct.
20 Q Okay. And what entrance do you usually use to come

into
21 the plant?
22 A My usual is the (Indiscernible) entrance on the other
23 side, usually the other side, there.
24 Q Okay, wait a second. Do--there's--there's two
entrances-
25 A Um-hmm.
[Page 11]
1 Q --out back, right?
2 A Um-hmm.
3 Q One by the cafeteria and--and one that's over by the
4 spiral II staircase?
5 A No, you're talking about the entrance of the car. How--
6 Q Oh.
7 A --(Indiscernible) get into the car, yeah.
8 Q Once--once you bring your car in and park and you're--
9 A Um-hmm.
10 Q --about ready to enter into the plant, is--is there an
11 entrance you usually go in?
12 A The back one, the one by the cafeteria.
13 Q Okay. And then can you tell me--I'll--I'll go back and
14 get specifically what you do at each step, but can you
15 just briefly run through for me what you generally do?
16 Well before I even do that, what time does your--as a set-
17 up operator on the second shift, what time is it your
18 understanding that you're expected to actually be up there
19 and--and punched in, ready to work?
20 A Must be 3:25.
21 Q About 3:25?
22 A Um-hmm.
23 Q What time do you usually arrive at work?
24 A Around 2:50.
25 Q Around two fifty or fifteen?
[Page 13]
1 are in the same general area?
2 A Pretty much, yeah.
3 Q Okay. Now when you do that, is there--at the time that

you arrive on the second shift, is there usually a line that you have to wait in order to get your actual white coat and your glove liners? I'll--I'll go on after this, but right now I'm just talking about when you walk through the door, maybe drop off your lunch and then go to the coat rack and get your white coat and then the glove liners out of the bin, is there usually a line there that you have to wait at?
A Usually there's a line.
Q And how--can you tell me--do you have any sense of--of what the normal amount of people there is usually standing in that line?
A Well it's kind of like if you get your coat, sometimes there's no line, people are mobbing to the front of the coat, you know, getting their own size.
Q It's sort of--there's no real line, it's just there's a lot of-
A Mobbing.
Q --people there.
A Mobbing.
Q Okay. How long, from the time that you actually walk through the door and actually--after you've dropped off [Page 14]
your lunch and head to the coat rack, by the time you're there at the coat rack, how long does it take you to sort of make your way up and--and actually get your coat and your glove liners and head for the cage? Do you have any sense of that? I mean how--how long that actually takes you on a normal, typical day?
A You mean from the time--minutes or some time frame like that, because I--I couldn't really count them.
Q Yeah. Well what I--what I was getting at, let's--let's put aside the time you've gone to the cafeteria, you've

11 already done that, dropped off your lunch. Now I take it
12 you have to come out, go down a hallway,--
13 A Um-hmm.
14 Q --and then there's the coat racks and the--and the bin
15 with the--with the glove liners, right?
16 A (Nods head affirmatively.)
17 Q From the time you actually get down the hallway to where
18 they are, do you--can you tell me your best estimate of
19 how much time, on a typical day, it would take you to
20 actually grab your coat and your glove liners from that?
21 A I think around--probably like ten minutes, something like
22 that. What it is, the coat is not arranged, they're just
23 put tight together, so you have to, once you get there in
24 the front, kind of like find your own size because all-
25 all (Indiscernible) one. The coat rack is only this long.
[Page 15]
1 Size 48, 52, 56 are all in one hangers.
2 Q Okay. And after you--after that time that you've spent
3 getting your--your white coat and--and your glove liners,
4 do you next go to the cage?
5 A That's correct.
6 Q Okay. Now how far--I mean it's not very far from--from
7 where those things are to the cage, is it?
8 A It's like a corner.
9 Q Just--just around the corner--
10 A Um-hmm.
11 Q --and there's the cage, right?
12 A That's right.
13 Q Okay. Now is there--on a--on a normal typical day that
14 you go to work, is there a line waiting at the--at the
15 cage? This is after you've already picked up your--
16 A Um-hmm.
17 Q --your white coat and your glove liners now, when you go
18 to the cage is there usually a line at the cage?

19 A Yeah, sometimes, because the temporary, when they comes
20 in.
21 Q Because? I'm sorry.
22 A The temporary, temps.
23 Q The temps that come in.
24 A Yeah, Mmm. So there's a line.
25 Q Okay. Is there--is--are there--is there some times when
[Page 16]
1 there's no line, where once you've actually got your coat
2 and your glove liners you can just walk right up to the
3 cage and, Hey, I'm here, give me my hairnet, earplugs?
4 A Sometimes, yeah.
5 Q Okay. Is there a--what would you say is most often, that
6 there is a line or that there isn't a line?
7 A If there's a line probably about five minutes, and if
8 there's no line, if the people there is paying attention,
9 sometimes there are a lot of people inside the cage
10 talking, you have to wait there in the front.
11 Q But I take it--I want to make sure I get correctly what
12 you've told me, is--is that--I take it your estimate is
13 that--that generally the wait is around five minutes--
14 A Correct.
15 Q --to--to--you know, from the time you've actually
already
16 got your coat and--
17 A Um-hmm.
18 Q --your glove liners now, it's about five minutes until
you
19 can get all of your stuff out of the cage?
20 A Correct.
21 Q Where do you go then?
22 A My locker.
23 Q And what do you do at your locker?
24 A Put on the coat, put--everything, get my tools and
25 everything.
[Page 17]

1 Q Okay. You--
2 A Put my shoes on.
3 Q Okay. Once you--once you get to the locker you put
4 everything on, both the stuff that's in the--the stuff
5 that's in the locker and the stuff that you've already--
6 A Correct.
7 Q --the white coat and liner, and everything you've
grabbed
8 from the cage?
9 A Correct.
10 Q How long does that take you? Not--not walking to the
11 locker. Let's just say once you actually get to the
12 locker,--
13 A Um-hmm.
14 Q --so now you're ready to put everything on, how long
do
15 you think it actually takes you to put everything on?
16 A That's--that's from the--from the cage, now, you said,
to
17 the locker?
18 Q Well actually that's a good point. How long do you
think
19 it takes you to walk from the cage to the locker?
20 A About three minutes.
21 Q Why is that? I mean do you have any-
22 A Yeah, you cannot-
23 Q Just because of the distance or because of-
24 A Yeah, distance.
25 Q --the number of people that are in the hallway?
[Page 18]
1 A Because of the people that comes out, in, and like that,
2 on the middle of the hallway.
3 Q Okay. So let's--if it takes on average about three
4 minutes to--You've finally got your stuff from the cage,
5 it takes you about three minutes to actually take
6 everything and get to your locker, right?
7 A I couldn't--would you do that one again?

8 Q Yeah. We went--we went to the point where you picked up
9 your white coat and liners and you said, I think--and once
10 again, I don't want to put words in your mouth so just
11 make sure, if--if I'm incorrect or anything, just let me
12 know that you disagree, okay? I think you told me that
13 you--probably the average, normal on a typical day, was
14 about ten minutes to be able to get your white coat and
15 liner--and glove liners. Right? If I'm wrong, please
16 tell me.
17 A I thought only the coat first, isn't it, and then the--the
18 glove liners.
19 Q Which are in the same place, right beside the coat-
20 A The-
21 Q --rack, right?
22 A Yeah.
23 Q Yeah. And so the--the--to get your coat and your white
24 glove liners, I thought you told me you took an average of
25 about ten minutes. Is that right? From the time you come
[Page 21]
1 A Just the--just the white gloves.
2 Q Just the white--
3 A White--okay. Yeah.
4 Q Okay? What I'm trying to find out is from the time you
5 walk through the door at Barber Foods initially, you know,
6 the--the initial entrance by--
7 A Um-hmm.
8 Q --the cafeteria, until you actually are able to grab a
9 white coat off the rack and a pair of white gloves, how
10 long normally does that take you, to that point?
11 A Did I--ten minutes?
12 Q Okay.
13 A Yeah. Yeah. Okay.
14 Q Yeah. And then from that point you go to the cage,
which
15 is just around the next corner, to get your hairnet and
16 rubber gloves and earplugs. Right?

17 A Correct.
18 Q Okay. Is that--are those the three items that you get out
19 of the cage? At that point?
20 A That's correct, yeah.
21 Q Okay. And how long--how much additional time does it
22 generally take you to go from the coat rack, having
23 already got your white coat, to get those items from the
24 cage?
25 A Did I say five minutes?
[Page 22]
1 Q Yeah.
2 A iv minutes. Yeah.
3 Q Okay. Now, I think you then told me that from--having
4 gotten those items from the cage to actually walk to your
5 locker takes around three minutes. Right?
6 A Correct.
7 Q Okay. So now you're at your locker. You've got every-
8 thing that you brought from the cage or--
9 A Um-hmm.
10 Q --from the coat rack, and you've also got your stuff in
11 your locker. How long does it take you to put all that on
12 before you start walking upstairs? Let's leave out the
13 walking upstairs. Let's--How long does it take you to put
14 that stuff on?
15 A Probably about ten minutes.
16 Q What takes the longest?
17 A Because--
18 Q No, I--what takes--
19 A Oh.
20 Q I didn't ask you what-
21 A Oh.
22 Q --took so long.
23 A All right.
24 Q Well why don't you ask me that? What took so long?
25 A I misunderstood-
[Page 23]
1 Q See?

2 A --the question.
3 Q You made me think of a question. Yeah. What--why does it
4 take you so long?
5 A What is the question now?
6 Q You said--you said you thought it takes you about ten
7 minutes to actually put the stuff on.
8 A Correct.
9 Q I guess my question is why does it take you ten minutes to
10 put--put that stuff on?
11 A Why--yeah, why too long? To take that--
12 Q Yeah, why does it take ten minutes?
13 A Because the locker--number one is when you open the
14 combination lock, sometimes you can easily open it right
15 away, sometimes you can't open it, you have to repeat it,
16 turning and turning, you cannot open it.
17 Q So some of that is, with a typical combination lock,--
18 A Lockers, yeah, Mmm.
19 Q --(Indiscernible) open the darn thing.
20 A That's right, yeah. And then-
21 Q Okay.
22 A --you put your--once you open it, put your shoes on, put
23 everything, the hard hat, back belt, the next--the vest
24 and the white coat, and get the tools and everything.
25 Q Well what do you--what do you do with the tools?
[Page 25]
1 Q Which stairs do you take?
2 A The back--the one that goes toward St. John.
3 Q Okay. The--you take the stairs after the--not the stairs
4 down--that are closest to the stage, but the ones after
5 the long hallway.
6 A That's correct.
7 Q Okay. And when you go upstairs, what clock--what time
8 clock do you usually punch in on, or is there any--Can you
9 punch in on any of 'em or is there one that you always--or
10 almost always punch in on?

11 A You have to punch into the pack-out 1 clock.
12 Q Okay.
13 A Wherever you (Indiscernible)-
14 Q Okay, you work at pack-out 1,--
15 A Um-hmm.
16 Q --so you punch in on the pack-out 1 clock.
17 A That's correct.
18 Q Right?
19 A Um-hmm.
20 Q How long, can you estimate for me, it takes you to walk
21 from your locker to the pack-out 1 time clock?
22 A Three minutes.
23 Q And when you're--when you first come through the door,
24 when you're--when you get to the top of the stairs and
25 open the door to actually enter the production floor, I
[Page 26]
1 take it at that point you--you have to have your coat and
2 your hair nut--hairnet and your earplugs on. Right?
3 A Correct.
4 Q You don't have to have your gloves on at that point if you
5 don't want to, right?
6 A That's correct.
7 Q Okay. Do you usually have 'em on or do you usually wait
8 until after you get inside?
9 A Usually (Indiscernible) first, and then just go in and sit
10 down, put in my pocket.
11 Q Tell me how--so--I'm not--I'm not sure I understood
12 exactly what you mean. When you leave your locker to go
13 walk upstairs and then you open the door to enter the
14 production floor, I--I know you have your coat and your
15 hairnet and your earplugs on. Right?
16 A Um-hmm.
17 Q Because those are required. Right?
18 A Correct.

19 Q Do you usually have your gloves on at that point?
20 A Required by the--the quality control to put it on, and
21 kind of like sanitize it.
22 Q Okay. So-
23 A (Indiscernible) on.
24 Q So when you open the door, do you then--and go in, do you
25 then put your gloves on and dip them into that dipping
[Page 31]
1 covers off and throw them away at that point before they
2 actually punch out too, right?
3 A Correct.
4 Q Okay. But the only thing--the only thing you ever throw
5 away up there is--is the rubber gloves, right?
6 A Correct.
7 Q And after you punch out and head down those stairs, when
8 do you take the rest of your stuff off?
9 A Usually downstairs, when you (Indiscernible) by the locker
10 door, actually there's a garbage by the door but sometimes
11 full already and everything's a mess, so just put them
12 downstairs.
13 Q Okay. Depend upon how many people have already gotten
14 out, the first garbage bag--garbage bins may be full, and
15 more than full, actually overflowing. Right?
16 A Correct.
17 Q In fact by the time you get there, isn't it--isn't it
18 often the case that the first ones are overflowing and
19 there's just--there's--there's plastic gloves--or rubber
20 gloves and hairnets and beardnets and--and stuff like
21 that, often times, overflowing onto the floor, all over
22 those trash bins, right?
23 A Correct.
24 Q Now when do those bins start? I mean there--there's

none
25 on the actual stairway itself, right? I mean--you
[Page 34]
1 saying plastic -- rubber gloves,--
2 A Um-hmm.
3 Q --the blue ones, I take it you often times take at least
4 those off before you actually swipe out.
5 A Correct.
6 Q Okay. And then after you leave the--the--the one thing
7 you've got left to throw away is your hairnet.
8 A Correct.
9 Q Do you usually--and--and do you usually throw that
away in
10 one of the trash bins in the hallway on the way to the
11 locker?
12 A Yeah. Usually downstairs.
13 Q Okay. So by then--so by then you've already taken
your--
14 your hat off, then.
15 A Correct.
16 Q So I--so I take it you must, usually anyway, as you're
17 walking down the stairway or the hallway, you've already
18 taken your hat off and taken your hairnet off. Right?
19 A Correct.
20 Q And as soon as you get the first bin you see that you
21 don't think it's going to fall on the floor, you toss it
22 in it.
23 A Correct.
24 Q Okay. And then do you go to the laundry--the stuff that
25 you have to--to put in the laundry bins is your white coat
[Page 38]
1 Q Okay. You could walk all the way down there, still have
2 your white gloves on, still have your coat on, with all
3 five buttons buttoned, wait until you get right in front
4 of the laundry bin and then peel off your gloves, unbutton
5 your coat, take it off and throw it on the laundry bin.
6 That's one way you could do it. Right?

7 A Um-hmm. That's right.
8 Q Okay. Another way you could do it is as you're walking
9 down the stairs and down the hallway, as--since it takes a
10 few minutes to get there, you know, you can on--while
11 you're on the way you're pulling your gloves off,
12 unbuttoning your coat and--and hauling it off, so by the
13 time you actually get to the laundry bin they're already
14 off, both of 'em, and then you just toss 'em in.
15 A I usually--
16 Q Can you tell me which of those is closer to what you do
or
17 if it's somewhere in between?
18 A Okay. I usually take off my coat right in front of bin,
19 because you cannot do it walking at the same time. You
20 might hit somebody, you know, because it's-
21 Q Yeah.
22 A You open your arms, you-
23 Q Okay.
24 A --might hit somebody in the face when you're walking
25 downstairs-
[Page 39]
1 Q Okay. And how--
2 --indiscernible) yourself.
3 Q Okay. And how about the cotton liners? The white
gloves.
4 A That's already off. But the--the coat, I usually remove
5 it right in front of the--
6 Q Okay.
7 A --the part-
Q Okay, so--so the gloves, you're usually peeling them off
9 while you're walking.
10 A Correct, yeah.
11 Q And then you just hold them, and then when you get in
12 front of the cart you take your--
13 A Coat.
14 Q You take your coat off. How long do you think it takes
15 you to take your coat off? To take your coat off and--and

16 throw it in the laundry bin.
17 A Just to take the--take the coat off? Or--
18 Q Well--
19 A I've got to-
20 Q Yeah. Let's--let's-
21 A The-
22 Q --say just take your coat off first.
23 A Um-hmm.
24 Q I mean how long does it literally take, in your best
25 estimate, to unbutton your--your five buttons and take
[Page 40]
1 your coat off?
2 A Probably one minute.
3 Q And how long does it do--how long does it take you to
4 actually, not including the walk down, but if you have to
5 stand in line or if there's a big crowd around the laundry
6 bin, to actually, once you get it off, to actually be able
7 to get to a position where you can throw it in the laundry
8 bin?
9 A About three minutes.
10 Q And why is that?
11 A Still more people are still around in front of 'em. You
12 can't just throw it because somebody's gonna get mad at
13 you, and (Indiscernible) office, you're in trouble.
14 Q Okay. Now at the locker, how long--how long do you--
how
15 long does it get [sic] you to get from the laundry bin--
16 well you go from there to the cage, right?
17 A Yeah. Correct.
18 Q Okay. And from the time you leave the laundry bin till
19 you go to the cage, drop that stuff off, and then back up
20 to your locker, how long do you think it takes you there?
21 A That's going back to-
22 Q You go to the cage and drop it off. Right?
23 A Yeah.
24 Q But that--that you just drop it off and say, like, either
25 Helen or Sharon, "Here's my stuff." Right?

[Page 41]
A No, sometimes you have to wait for them there, to return to cage, because usually they take your name, what kind of materials that you usually check it out, and they have to cross it out before you--to return it.
Q Yeah. But isn't it--isn't the usual situation there, though, that--that when you come with the cage--with your materials--Do you ever go in the back door of the cage or do you always drop it off at the window?
A At the window.
Q Okay. And isn't it the usual that you just go up and--and you've got the numbers or your metal--metal detector stick and you just drop it off and, you know, they know who you are anyway, both of 'em, right?
A If they were there.
Q If they were there.
A Yes.
Q Are there occasions when neither of them are there?
A Sometimes they're not there.
Q Okay. How often does that occur?
A Let's see. I think one--like three times, three times in one week. Sometimes they are outside.
Q Outside where?
A See there's a back door.
Q Yeah.
A Get out there, probably smoking, then come back.
[Page 42]
Q You--if there's somebody there, if either Sharon or Helen are there or both of them are there, it doesn't take very long to drop off your stuff at the cage, does it? At the end of your shift?
A What I usually do is make sure that they cross it off my--the numbers that I borrowed.

7 Q You usually make sure--you usually wait to make sure they
8 cross it off. Right?
9 A Correct. Yeah.
10 Q Why do you do that?
11 A Sometimes I would return one numbers and then they try to
12 find--try to find me to find the--to get the numbers and
13 said I forget to return it. Here it is.
14 Q That's happened to you before?
15 A Yeah. So I make sure I wait before I leave.
16 Q Okay. Can you give me some sense of what the usual time
17 is it takes you to actually drop your stuff off at the
18 cage at the end of the day?
19 A You mean if there's somebody there.
20 Q I'm sorry?
21 A Repeat the question again.
22 Q Yeah. Can you give me some sense of the--of the time, if
23 there's a usual time, that it takes you to actually drop
24 your stuff off at the cage at the end of the shift?
25 A If there's somebody there, take about a minute.
[Page 43]
1 Okay.
2 If there's nobody there, I have to wait for like four or
3 five minutes.
4 Q If there's nobody there.
5 A Nobody there, yeah.
6 Q And then you go to your locker.
7 A Correct.
8 Q Okay. How long does it take you to walk to your locker?
9 A From the cage, is it?
10 Q Yeah.
11 A I'd say that's three minutes.
12 Q And once you get to your locker, at that point you've got

13 to put your lock-out tag-out and your tools back in your
14 locker. Right?
15 A Correct.
16 Q You've got to change from your steel-toed boots into
your
17 regular shoes or whatever you wear to work. Right?
18 A Correct.
19 Q And whatever you're wearing for--for warm--for
warmth,
20 you've got to take that and put it in your locker. Right?
21 A Correct.
22 Q And your back belt, bump hat, and safety glasses
you've
23 got to toss in there. Right?
24 A Right. Yeah.
25 Q Okay. How long does it take you to do all that, once
[Page 44]
1 you've got to your locker, to just take that stuff off and
2 get it in and close your locker and you're ready to roll?
3 A I'd say four minutes.
4 Q And then how long does it take you to get from your
locker
5 outside?
6 A Roughly three minutes, I think.
7 Q Now how long approximately, do you think, from the
time
8 you actually, on a normal day, from the time you actually
9 swipe your card to punch out until you walk out the
10 entrance by the cafeteria at the end of the day, how long
11 does it usually take you?
12 A Hmm.
13 Q On a normal day. If there is such a thing as a normal
14 day.
15 A Oh, about seven or eight minutes, I think. You mean by
16 the time I remove everything, you said.
17 Q Yeah. From--from--what I want to know is your best
18 estimate of--of from the time you actually swipe your card

19 on the out clock upstairs,--
20 A Okay.
21 Q --until you've come down, you've--you've dropped your
22 hairnet in the garbage, you've dropped your gloves and
23 coat off at the, you know, at the laundry bin, you've
24 dropped your materials off at the cage, you've gone back
25 to the locker to take your stuff off and put it away and
[Page 48]
1 Q Or Maria Pulsoni.
2 A Um-hmm.
3 Q Okay. Are you aware of any situations since December 1997
4 where any of those individuals, or anybody else, shaved
5 your lunch period so that you didn't--when--Do you know
6 what I mean when I say "shaved"? In other words took time
7 off it, so that you didn't actually get your thirty
8 minutes lunch break?
9 A We just notice about sometimes the break is too short.
10 Thinking--I don't know if they shave or--I don't know
11 what's that thing that, sometimes that break is a little
12 bit too short for thirty minutes.
13 Q Sometimes it feels short?
14 A Yeah. Is like only twenty-seven, sometimes twenty-five,
15 sometimes--
16 Q And how do you know that?
17 A Because sometimes when you look at the clock, sometimes
18 the--the clock are set different, too. (Indiscernible)
19 five minutes fast.
20 Q Okay. Have you--have you kept track of those situations
21 when--when you felt that you weren't getting your full
22 thirty minutes?
23 A (Indiscernible) mean-

24 Q Yeah, like have you ever kept track of it, saying, you
25 know, we didn't--you know--For example, can you tell
me
[Page 54]
1 Q Okay. And then you testified when you have to drop
things
2 off at the cage at the end of the day, how--how often is
3 there nobody at the cage when you go to drop your stuff
4 off, drop the Thiele number and the metal detector stick
5 and--
6 A Usually one--like three days in a week, and sometimes I
7 even bring the thing with me because there's nobody there.
8 Sometimes the people that are supposed to be there left
9 already, so I have to bring it home.
10 Q How often has that happened?
11 A Well, in--one week I think is like twice, twice, 1998,
but
12 this year, you know, it's--there are all somebody there.
13 Q Okay. And then you testified that it takes about three
14 minutes to walk from the cage to your locker at the end of
15 the day. How confident are you about--about that number?
16 A Yeah, about three minutes, yeah. Yeah.
17 Q And you said--you testified that at the locker you have
to
18 change and put away your tools and--and other equipment
19 that you store in your locker. You testified that it
20 takes about four minutes. How confident are you about
21 that?
22 A You mean does it--drop everything already?
23 Q Right, just the--the things that you have to do at your
24 locker.
25 A So I said ten minutes.
[Page 55]
1 Q How long does that, just--just at the locker, take?
2 A To do everything, put it away, everything?
3 Q Yes.
4 A About eight to ten minutes.

5 Q Just at the locker.
6 A That's correct, yeah.
7 (Off-record comments; the deposition continued:)
8 Q And then you said that to walk from the locker to outside
9 takes approximately three minutes.
10 A Correct.
11 Q Is that correct?
12 A Correct.
13 Q Okay. And do you remember approximately when the
cage
14 came into existence?
15 A I'm not really sure of the date, though.
16 Q Do you remember approximately?
17 A I think around ninety--I--I really cannot give you the
18 date there, because when the other cage--because they
19 switch it around. I think Alan Gilman was still there.
20 think 1997, around 1997.
21 Q Okay. And then how many people worked at the cage
when it
22 first opened up?
23 A Only one person.
24 Q So did it take a longer time or a shorter time than it
25 does now to get your equipment from the cage?
[Page 56]
1 A What was that again?
2 back when there was only one person at the cage,--
3 A Um-hmm.
4 Q --compared to now,--
5 A Um-hmm.
6 Q --does it take longer now, shorter now, or the same
amount
7 of time as it did when there was only one person in the
8 cage?
9 A Shorter now.
10 Q It's shorter now?
11 A Yeah. Yeah. Even if there's three people, but
sometimes

12 they are talking and everything, and they (Indiscernible)
13 some of the people in front of them, because usually
14 there's like six or five of them inside the cage. There's
15 supposed to be two people. People are talking. Once you
16 get their attention then you get a swear, they swear at
17 you. Oh yeah.
18 Q So they have a language problem there?
19 A Oh yeah. It was Sharon, how many times.
20 Q Do you know about how much longer it takes to get your
21 equipment in the morning, how--how much more time it took
22 when there was one person than now, to get your equipment
23 in the--at the beginning of the shift?
24 A Before? One person before, is that what you're saying?
25 Q Right. How much longer did it take then than it does now?
[Page 57]
1 A I couldn't give estimate, no. Be a long time.
2 Q It's been a long time
3 A Yeah.
4 Q So you couldn't give a--
5 A No. Couldn't give it.
6 Q Okay. How long does it take you to find parking in the
7 morning?
8 A Second shift. I'm second shift.
9 Q In the afternoon. Fall into that trap too.
10 A Usually it takes longer to find a parking space.
11 Sometimes they're already there in a car instead of--all
12 the same people are going to park, they just, you know,
13 going to fix their hair and they fix their eyes and, "Come
14 on people, are we gonna park? I'm gonna be late." They
15 just ignore you. (Indiscernible) cool.
16 Q So typically how--how long do you think it takes to--to
17 find a spot?
18 A It takes me about fifteen minutes to park.

Q About fifteen minutes? Is that--
A Yeah.
Q --typical?
A That's correct, yeah.
MR. DIXON: That's all I have.
MR. STEVENS: That's all I've got.
(The deposition concluded at 4:07 p.m.)

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	CIVIL NO. CV-00-371-P-C
	*	
BARBER FOODS,	*	
	*	
Defendant.	*	

DEPOSITION of DEICO MEKONEN, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 25, 2001, before Roxanne DiMarco, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.
Translator:	Ghezai Menelik

[Page 5]

1 almost all the time that you're on the production floor?
2 Yes.
3 Q Do you usually wear the white glove liners?
4 A Okay. I wear the white and the blue on the top of it.
5 Both of them.
6 Q Do you--do you usually wear an apron over your white coat?
7 A Yes, I do.
8 Q Do you usually wear sleeve covers?
9 A Yes, I do.
10 Q Do you wear earplugs?

11 A Yes, I do.
12 Q Do you wear safety glasses?
13 A Yes, I do.
14 Q Do you wear those all the--do you wear those almost all
15 the time on the production floor?
16 A The safety glasses start on three--three weeks ago, but
17 once I am on the shift, I wear them all the time. Before
18 three weeks, in different areas, they ask you to wear
19 safety glasses and then you was other required, but now
20 it's a must. (Indiscernible) just do it.
21 Q Okay. Do you wear a plastic bump hat normally?
22 THE TRANSLATOR: Bump? What is-
23 MR. STEVENS: It's--it's a hard--you know, like a
24 construction site hard hat,-
25 THE TRANSLATOR: Like a-
[Page 6]
1 MR. STEVENS: --but it's plastic.
2 THE TRANSLATOR: --(Indiscernible)? Something like
3 that? The--the construction workers?
4 MR. DIXON: Yes.
5 MR. STEVENS: Yeah, that type of hat.
6 THE TRANSLATOR: Type of helmet.
7 MR. STEVENS: Yeah. That's what it is, but it's
8 plastic.
9 THE TRANSLATOR: Okay, plastic. Okay.
10 A Okay. It's not always and not in all areas, but there are
11 certain areas where there are certain items may fall,
12 (Indiscernible) on your head, then I have to wear them.
13 And also in certain cold areas I wear the bump hat, and
14 then when I go out I just take them off.
15 Q So am I correct that you--you do not take a bump hat
with
16 you to the production floor every day?
17 A So I--I don't take it to production floor. At all.
18 Q When you need a bump hat, where do you get it?
19 A Either we--they place them on the spot and we pick
them

20 from there or they're--and we just go to whatever those
21 things are and they pick them from there and they come
and
22 they give us.
23 Q Do you wear a back belt?
24 THE TRANSLATOR: Back belt?
25 MR. STEVENS: Back belt.
[Page 7]
1 A Yes.
2 Q Do you wear that every day?
3 A Yes.
4 Q Do you have a locker?
5 A Yes.
6 Q What do you keep in your locker?
7 A Eyeglasses, the safety glasses. The safety glasses? The
8 belt. A coat.
9 Q A what? I'm sorry.
10 A A coat. Coat.
11 Q Oh, a coat.
12 A Yeah, c-o-a-t.
13 Q Yeah.
14 A And shoes. Boots. Are they boot? Okay. Shoes.
15 Q What kind of a coat is that that you keep in your locker?
16 A In a warm place, just for the warm place, they give the
17 long coats. That's what we wear.
18 Q Now what kind of a--do you have to wear steel-toed
boots
19 to work?
20 A No, I wear my own, not the other.
21 Q What time does your shift start in the morning?
22 A 6:25.
23 THE TRANSLATOR: Here I--I try to ascertain, when I'm
24 asking him about the time, because he is speaking
Amharic and
25 in the Amharic language you--well you start the day from
6:00
[Page 11]

1 other one. They're all together.
2 (Deponent and Translator converse.
3 A They are--one is on the left, the other one is the right-
4 hand side, so I just pick one, then I pick the other.
5 (Deponent and Translator converse.)
6 A After I do this, after the liner and the clothes, after I
7 pick up, then I go to the other place to pick the hairnet,
8 the beard cover, the ear cover, plastic glove. Plastic
9 glove.
10 Q Okay. And what is the--Is there usually a line at the
11 window waiting to pick--of people waiting to pick up
12 their--their hairnets and beardnets and--and plastic
13 gloves?
14 A Yes.
15 Q What is the--typically, or normally, how many people
are
16 there in that line when you--when you get there to get
17 your stuff?
18 A Well, the people come from all directions so I--I never
19 counted how many people. There are the people, one
comes
20 from this direction, the other one comes from the other,
21 so I really don't know.
22 Q How long does it normally--Is there normally a line
where
23 you have to wait in order to get your white coat and
24 gloves?
25 A About seven to eight minutes.
[Page 12]
1 Q I'm not asking how long it--what--What I'm asking is is
2 there usually a line, just where you pick up your--your
3 white coat and your gloves, not the window where you pick
4 up everything else, but the white coat and the gloves, is
5 there usually a line that you have to wait in order to
6 pick those up?
7 A What he said is the place is very narrow, so when
everyone

8 picks whatever they pick, they have to wait outside, so
9 you make way for them, but I don't know exactly how
many
10 people line up there to pick their items.
11 Q From the time you get there, which is usually around
6:10,
12 until you pick--until you get your white coat and gloves,
13 how long does it usually take you from the time you
arrive
14 at 6:10 to actually get your white--white coat and gloves?
15 A It's about--it takes me about ten minutes. If I start at
16 6:10, I finish by 6:20, 6:18, around that time.
17 Q Finish what by 6:18?
18 A Going up, going from the start I come there, from the
19 moment I come there, I line up, so I go in, pick things
20 and then come out, (Indiscernible) my time about 6:18.
21 The whole process takes me about eight or ten minutes.
22 Q When you say the whole--After you get your--whatever
you
23 get from the windows, the hairnet and the beardnet, from
24 the window, and the--and the plastic gloves, do you then
25 go to the locker?
[Page 13]
1 A Yes, I do.
2 Q And what--
3 THE TRANSLATOR: May I add something?
4 MR. STEVENS: Yes.
5 THE TRANSLATOR: That I--the one that I said eight to
6 ten minutes' time,--
7 MR. STEVENS: Well--
8 THE TRANSLATOR: --he said at 6:10, that's only to
9 pick the clothes and so on from that--That's what he said.
10 MR. STEVENS: Okay. That's what I was being
11 confused, is--is I was trying to break it down. And so am I
12 correct, and--and you can then say this to me and get me
back
13 with a yes or no,--

14 THE TRANSLATOR: Yeah.
15 MR. STEVENS: --that--that the estimate of eight to
16 ten minutes' time is the time it takes him to get from the--
17 arriving at the plant and walking through that door at about
18 6:10, until he actually is able to pick his white gloves--white
19 gloves and white coat off the rack? That's the eight to ten
20 minutes?
21 THE TRANSLATOR: Yes.
22 (Deponent and Translator converse.)
23 THE TRANSLATOR: Yes.
24 Q And from the time that you then have your white coat and
25 gloves in your hand until you're able to get your hairnet
[Page 14]
1 and beardnet from the person handing it to you out of the
2 window, how long does that usually take you?
3 A Oh. He is saying, From the time I arrive there, 6:10,
4 pick my--the white coat and then the--the gloves there,
5 and then I go to the cage to pick the hairnet and the--
6 Q Beard cover.
7 A --beard--
8 Q Beard cover or beard--
9 A Beard cover, whatever, up to that time it takes me eight
10 to ten minutes. This is the whole process.
11 Q And from the time after that eight to ten minutes -- so
12 you've--you've got your coat and gloves and you've got
13 your hairnet and beardnet -- from the time you've got
14 those to go to your locker and get whatever you get out of
15 your locker, how long does that--and put it on, how long
16 does that take you?
17 A It takes me about seven minutes. That is from the cage
18 until he picks everything from his locker.
19 Q And how long does it usually take you once--to go from
20 your locker up to swiping your card and punching in?
21 A About two minutes.

22 (Deponent and Translator converse.)
23 A Well, normally I go and swipe the card only after I am
24 assigned my job, but before that I don't do it.
25 Q Who assigns you your job?
[Page 17]
1 THE TRANSLATOR: Okay.
2 MR. STEVENS: So that's--I'm using specific terms and
3 that's really all I want him to focus on, is the specific terms
4 that I use.
5 THE TRANSLATOR: Okay.
6 (Deponent and Translator converse.)
7 A Regardless what time I arrive at the plant, if it is
8 earlier than 6:25 I'm not allowed to go upstair to where
9 my job assignment is given to me, so that means I have to
10 wait there up to twenty-five past 6.
11 Q Do you usually--Is it normal that you have to wait
before
12 you can go upstairs to punch in?
13 A What he is saying is, okay, we (Indiscernible) up to
going
14 to the locker,-
15 Q Yes.
16. A --that is from picking the clothes and going to the
cages
17 and to the locker. Now he--he's said he's--I wait at the
18 locker up to 6:25. When it is 6:25, then I go upstair to
19 where my supervisor is, and then we wait for him there.
20 And when he tells us our respective assignments, then we
21 go to the time clock and we pass through the cards.
22 (Deponent and Translator converse.)
23 A We don't go upstair before six--6:25. So once it's 6:25,
24 then we go upstair, we wait for our supervisor, and then
25 when he gives us our (Indiscernible) assignments, then we
[Page 18]
1 go (Indiscernible) the time clock.
2 is there anything that you put on after swiping the time
3 clock?

4 A If I go to the meat department to cut meat, I put gloves.
5 (Deponent and Translator converse.)
6 A Sometimes I put iron (phonetic) glove, or something made
7 of iron glove, so that--to protect our hand from being cut
8 off.
9 (Deponent and Translator converse.)
10 A We also put certain white item, white gloves, other
11 clothes, (Indiscernible) say maybe is white sleeve?
12 Q Yes. I was going to say you put your--you usually put
13 your sleeve--sleeve covers on--
14 A Yes.
15 Q --after you've punched in. Right?
16 A But he's saying he's not assigned to the same place all
17 the time, so one time he puts certain glove, other time he
18 puts another kind of sleeve, what he's saying.
19 Q Mr. Mekonen, if you were to go to the plant and not have
20 to get on any of this stuff, but could just go to the
21 plant and walk up and punch in, how long do you think it
22 would take you, just go--from the time you enter the plant
23 to walk up and punch in, without having to get any of this
24 stuff?
25 A To use his words, Well, I'm just a young fellow, so it
[Page 19]
1 take me about a minute or two. I'm not an old guy, is
2 what he's saying.
3 THE REPORTER: I'm not a what?
4 THE TRANSLATOR: I am not an old person,-
5 THE REPORTER: Oh, okay.
6 THE TRANSLATOR: --so it takes me a minute or two.
7 mean I use his-
8 Q From--at the end of the shift, when it's time to go home,
9 from the time you actually swipe and punch out until you
10 leave the plant door, how long does that take you?
11 A It takes me about seven minutes. That is after doing
12 everything I need to do, it takes me seven minutes.

13 Q Do you take off anything and--before you punch out?
14 A No, I don't take off any. He's not allowed to take off
15 anything.
16 Q You can--it's allowed to take off your apron and throw
it
17 away before you punch out, isn't it?
18 A No, I don't.
19 (Deponent and Translator converse.)
20 A The time clock is at the door, therefore I don't take off
21 anything before I swipe my--my--the card, and then only
22 after I pass that and I--I start dropping off things.
23 Q Do you start taking off things while you're walking
down
24 the--After you swipe the card, do you start taking off
25 things while you're walking down the stairs and down the
[Page 20]
1 hail?
2 A After I go past the swipe, I just start taking off things
3 from my hand, but I just carry them myself, I don't just
4 drop them.
5 Q Before you--while you're walking, after the swipe and
6 while you're walking down the stairs and the hail, before
7 you get to the laundry bin and the trash bin where you
8 throw the coats and what--and the stuff that you're going
9 to throw away, do you usually already have it all off? So
10 you just have to throw it in the bins?
11 A Well I just--as I go on I just take off my clothes and
12 then I just put them there, where everyone puts his--his--
13 Q That is exactly what my question is, is do you--do you
14 usually have your stuff off by the time you get to the
15 bins where you're going to put it?
16 THE TRANSLATOR: And have everything on his hands.
17 MR. STEVENS: Yes.
18 A So as I go past the--the swipe, the time--the time clock,
19 and I start taking off items like the hairnet and so on,
20 and as I go past our, I think, locations where I--I drop
21 them in the basket, not--not just anywhere but just

22 containers (Indiscernible) but there I--I leave them. But
23 at the end I have my clothes where I have to put it in a
24 certain place to be sent to--for laundry, it seems to me,
25 that's all (Indiscernible)
[Page 21]
1 Q The two things that have to go in the laundry are your
2 white coat and your white gloves, right?
3 A Yes. Those two items go to laundry, but the other things
4 that protect me from--
5 Q I understand. All I'm asking is the only thing--the
6 things that go in the laundry are the white gloves and the
7 gloves--and the white gloves, right?
8 A Yes.
9 Q Okay. And by the time you've got to there, you've
already
10 thrown away your other stuff, right?
11 A Yes, I drop them.
12 Q And by the time you get to wherever you deposit the
13 laundry, the white coat and the gloves, you've already
14 taken them off while you're walking, right?
15 THE TRANSLATOR: That is the--the coat and the glove,
16 huh?
17 MR. STEVENS: Yes.
18 A No, I just take them off, the white coat and the white
19 glove, right at the place where I give for laundry.
20 Q How long does it take you just to take off the white
21 gloves and the white coat?
22 A It is just not--I--I don't time myself, but it doesn't
23 take me--doesn't take time, is what he's saying.
24 Q How long does it take to take off your hairnet, beardnet
25 and earplugs and stuff that you throw away every day?
[Page 22]
1 A Because I just throw these things on the way as I go on, I
2 never bothered to--to keep time.
3 Q Can you give me any estimate at all of how long that
4 takes, just to throw the stuff away?
5 A It's very difficult for me to say anything, but what--what

6 it would just take me maybe a minute or two or three, and
7 that's--that's as I walk on. I don't--I don't time
8 myself, in other words, he's saying.
9 Q Is--is most of the time, from swiping your card until you
10 leave the outside door of the plant, is most of that--most
11 of the time that it takes you on a normal day spent
12 walking?
13 THE TRANSLATOR: Just walking or just as he--his
14 normal--normal process?
15 MR. STEVENS: Yeah. Well what I'm--what I'm trying
16 to get at, if it--
17 THE TRANSLATOR: Yeah.
18 MR. STEVENS: --if it only--if it takes hardly any
19 time to take your white coat and gloves off,-
20 THE TRANSLATOR: Yeah.
21 MR. STEVENS: --if it takes hardly any time to throw
22 something away,-
23 THE TRANSLATOR: Yeah.
24 MR. STEVENS: --and if you're doing that while you're
25 walking, I--I think Mr. Mekonen said that it normally
takes him
[Page 24]
1 (Deponent and Translator converse.)
2 A Well there's a place where people take normal--normally
to
3 go out, but I often go through the shortcut, so--because
4 from the upper place where I go to time clock, so I take
5 the shortcut and I go out. Because the reason I'm saying
6 this is because I don't want them to think that I am
7 telling a lie.
8 Q How long do you get for a lunch break?
9 A About thirty minutes.
10 Q Are you aware of any situations in which you have not
been
11 given your thirty minutes for lunch break?
12 A This is a good question, he says. (Indiscernible.)
13 Q Glad I finally asked a good question.

14 A I think they work in a--in a line, so first the first one
15 goes to, I think, to have lunch, and then the--the one who
16 is last has to wait until the production stops, so he
17 cannot go, it seems to me, unless they come, so substitute
18 to replace him. Okay?
19 (Deponent and Translator converse.)
20 A Okay. What he said is, We just do these things turn by
21 turn, we don't know who goes first or who goes last,
today
22 may be the first, another time may be the last one, so we
23 do it turn by turn, and unless one comes you cannot leave
24 the production and go away, and normally I go with the
25 first batch, but then I may have, perhaps, have to wait
[Page 25]
1 for others to come too, depends, so I never ideally took
2 time and I--I don't really know how long it takes me, so I
3 don't know, maybe I was taking thirty minutes or less than
4 thirty minutes. (Indiscernible) what he's saying.
5 Q Am I correct that you don't--Have you ever kept track of
6 the time that you get for a lunch break? Actually kept
7 track of the time?
8 A When they call me to work, I go to work. When they tell
9 me to rest, I rest. So I never kept track of it.
10 (Deponent and Translator converse.)
11 A I think they are in a line and they go to--for lunch,
12 lunch break, turn by turn, it seems to me, but it seems to
13 me what he's saying is whoever is at the end of the line
14 has to come up to the place together with those who left
15 first, who left earlier, so (Indiscernible) it's logical
16 that the one who left last takes lesser time than the
17 rest, although this assignment is not given only to him
18 but they do it turn by turn, so it means one time, a
19 certain time, you have a full time, then another time you
20 have less time. That's what he's trying to say.
21 Q Have you ever been required to go visit the nurse
during
22 your lunch break?

23 THE TRANSLATOR: Nurse--what did you call, nurse
24 what?
25 MR. STEVENS: During your lunch break
[Page 26]
1 THE TRANSLATOR: Nurse what?
2 MR. STEVENS: Have you ever been required to go visit
3 the nurse during your lunch break?
4 A No, I don't remember that.
5 MR. STEVENS: No more questions.
6 THE TRANSLATOR: Okay.
7 MR. DIXON: I. have a--I have a couple questions.
8 THE TRANSLATOR: Yes, sir.
9 EXAMINATION BY MR. DIXON:
10 Q You said earlier that you go up to the time clock at
6:25.
11 A Yes.
12 Q And that you sometimes have to wait for your
supervisor to
13 tell you what job you have.
14 A No, but that's always. It's not only sometimes, but
15 always--
16 Q Okay.
17 A --we have to wait for the supervisor.
18 Q So how long typically do you have to wait for your
19 supervisor to give you your work assignment for the day?
20 A About six to seven minutes.
21 Q And when you're at the--at the--during lunchtime, when
the
22 announcement that lunch is starting is made and you're at
23 the end of the line, how long do you have to wait before
24 you get to leave the production room?
25 (Deponent and Translator converse.)
[Page 27]
1 MR. STEVENS: Can I stop you for a second please?
2 THE TRANSLATOR: Okay.
3 MR. STEVENS: Whatever answer he gives now, I'm--I
4 have absolutely no clue as to what question he's--

5 THE TRANSLATOR: The question is this.
6 MR. STEVENS: Yeah.
7 THE TRANSLATOR: I think, if I have understood it
8 correctly, his question is this. Well they have lunchtime, say
9 thirty minutes lunchtime,--
10 MR. STEVENS: Yes.
11 THE TRANSLATOR: --so now they announce lunchtime.
12 When they announce lunchtime, well in principle people should
13 start leaving for--for lunch. So because they work in line,
14 now the first one goes out, but one who is last has to wait
15 until what has--
16 MR. STEVENS: Absolutely but--
17 THE TRANSLATOR: So his question was how long does it
18 take if you--if you leave and from the time they announce until
19 the time you leave, if you are the last one? That is the
20 question, yeah?
21 MR. DIXON: Well let me rephrase the question.
22 THE TRANSLATOR: And that's what I am saying, how
23 long-
24 MR. DIXON: Let me rephrase the question.
25 Q How much longer does it take for the last person to get
[Page 28]
1 out the door of' the production room for lunch than it
2 takes for the first person o ye out the door of the
3 production room for lunch?
4 THE TRANSLATOR: So more or less, after the first one
5 left, how long does it take you for you to leave if you are the
6 last one?
7 MR. DIXON: Correct.
8 MR. STEVENS: Yes.
9 THE TRANSLATOR: That's what you're saying.
10 MR. DIXON: Yeah.

MR. STEVENS: Correct.
THE TRANSLATOR: Okay.
(Deponent-and Translator converse.)
A Four minutes.
MR. STEVENS: There. Thank you. Okay.
(Deponent and Translator converse.)
A Four minutes.
MR. DIXON: Okay. That's all I have.
MR. STEVENS: That's all I have, too.
THE TRANSLATOR: Okay.
(The deposition concluded at 12:30 p.m.)

Exhibit 4

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*
	*
Plaintiffs,	*
	*
V.	*
	*
BARBER FOODS,	*
	*
Defendant.	*

DEPOSITION of ERNEST LEVESQUE, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 26, 2001, before Carla Culver, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.

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EXAMINATION	PAGE
BY MR. STEVENS	3

EXHIBITS

No Exhibits were marked.

[page 8]
1 Q Almost like galoshes type of things you just slip on?
2 A Yeah, they're a boot with an insole inside.
3 Q And what did you wear under them for footwear?
4 A Nothing, just socks, it had its own insole, was like a
5 wear boot (phonetic).
6 Q You'd come to work with whatever you wore --
7 A Oh, sneakers, and you'd have to take them off, put them
in
8 the locker, put those boots on.
9 Q One more rule in addition to saying yes or no instead of
10 uh-huh is that I'll do my absolute best not to interrupt
11 you when you're giving an answer.
12 A Oh, okay.
13 Q And sometimes you know -- you know, it's very easy,
you
14 know the topic that we're talking about so you can
15 anticipate where I'm going with my question, and the
16 natural human reaction is to just jump in and start
17 answering. But please try to wait because it really makes
18 for a messy transcript if we don't. Okay?
19 A Okay.
20 Did you have to wear earplugs in the meat room?
21 A Yes.
22 Safety glasses?
23 A Yes.
24 A bump hat?
25 A Yes.
[page 11]
1 their jobs and making it so the work environment gets
hostile on a basis [sic]. If the production level is not
3 up to what they consider the goal for the day, they push
4 the workers harder. You know, they make for a real
5 hostile work environment.
6 Q What else do you keep in your locker besides a little box
7 with extra gloves and extra aprons?
8 A I walked in with my coat from like if it was winter, to

9 put my coat -- my shoes I had to take off cause I wasn't
10 about to ruin them on that floor.
11 Q I'm not talking about the stuff that you would leave in
12 the locker.
13 A Okay, but --
14 Q Please try to remember not to talk over me, okay?
15 A Okay.
16 Q And I'm not talking about the stuff that you when you
come
17 in off the street would leave there. I'm talking about
18 the Barber Foods issued equipment or clothing that you
19 would leave in your locker all the time, okay. Let me run
20 down through, maybe that would be the better way to do
it.
21 Where did you get the white coat at the beginning of the
22 day?
23 A From the clothes rack.
24 Where did you get your hairnet?
25 A Same place. See, they had this little room where you
have
[page 12]
1 to get the stuff from.
2 Q Let me ask you, was there a cage?
3 A They were building it at the time.
4 Q At the time you left they were building the cage?
5 A They were building this cage for dispensing the stuff.
6 Q At any point while you -- by the time you left or at any
7 point when you were employed at Barber Foods did you
have
8 to get any materials out of the cage?
9 A Oh yeah, near the end cause they just got the cage built.
10 They did put it on line about the -- August.
11 Q And you think it was put on line approximately August
'99,
12 about the last month that you were employed there?
13 A Yeah.
14 And then at that point I take it you'd have to get your

15 hairnet, and earplugs, and --
16 A Um-hmm, from that supply cage, yes.
17 And before then you would still get your coat from the
18 rack, right?
19 A Yup.
20 And where was the rack usually located?
21 A The rack -- all that stuff was locked up in the dry goods
22 area and you had to get a key because at the time I showed
23 up no one was there.
24 And where did you get the hairnet?
25 A From -- there's the rack and then there's the -- all that
[page 13]
1 stuff was put on a doily, the hairnet, the beard nets, the
2 gloves, the liners, the aprons, --
3 Q Earplugs.
4 A -- and earplugs. They're all on this dolly right next to
5 the coats. And when the normal shift came in they wheeled
6 'em out, okay, and the people would stand in line,
7 sometimes excessively long, to wait in line just in order
8 to get their stuff. I was punching in at 5:30 in the
9 morning and I was able to get in there, you know, but I
10 still had to chase down the key because it was locked up.
11 Q Okay, let's -- let me start here first. What time were
12 you expected -- what was the expectation that you would
be
13 punched in so your shift would start, what time?
14 A Let's see, the punch in time was 5:30, but I was
expected
15 to be there at 5 to make sure my gear was on.
16 Q You were expected to actually be where at 5:30?
17 A At the plant. You know, at one time they had it in the
18 manual, and I went and I looked, they changed the
manual,
19 but the first manual, I owned it, had it clear in black
20 and white print, You are expected to show up half-an-hour
21 before your shift to have all your gear on.
22 You actually saw that in a manual somewhere?

23 A Yeah, but that manual I don't have a copy of anymore.
24 They went and redid the manual and the new manual
didn't
25 have it, have that statement in there.
[page 14]
1 Q But what I'm wondering is, you worked in the meat
room,
2 where did you punch your clock?
3 A Upstairs on the production floor.
4 Q Which clock did you use?
5 A The meat room clock was inside the meat room
department.
6 Q So is that -- when you say 5:30, is that where you were
7 expected to be to punch in at 5:30?
8 A Um—hmm.
9 Q What time -- did you drive your own car to work?
10 A Yes.
11 Q What time did you usually arrive at work?
12 A Five o-clock.
13 Q And after you got to work, what would you do, just
typical
14 of what you would do?
15 A Well I'd have to go get the gear, and that would take
16 fifteen to twenty minutes, depending on how many people
I
17 had to chase down in order to unlock the closet to begin
18 with. And then the procedure, you have to get all the
19 gear on cause you cannot walk on the production floor in
20 street clothes, period. You have to have the coat, the
21 hairnets, and in my case I made sure the boots because
you
22 go up there, they have that soap that they were cleaning
23 the equipment with all over the floor in puddles because
24 the cleaning crew hadn't done their final squeeging of the
25 floor. That soap was rather caustic to shoe glue, and if
[page 16]
1 A Yeah.

2 Q How about your earplugs?
3 A That was from the dry goods as well.
4 Q Safety glasses?
5 A That one was issued.
6 Q And did you take those home at night or did you keep
7 them --
8 A I left those in the locker right next to the boots.
9 Q And your bump hat?
10 A Same thing, issued, kept that in the locker.
11 Q And your back belt?
12 A That was issued and I kept that with the locker.
13 Now how many people -- you usually got there to work at
5
14 o'clock and you'd have to find a key to get into dry goods
15 to get your stuff, right?
16 A Right.
17 And how many other people would work in the meat
room with
18 you?
19 A Eight.
20 And so I take it once you found the key and got in there,
21 you didn't really have to stand in line to get your stuff,
22 right?
23 A No, there was no real line standing.
24 So the only delay in actually getting to where you had to
25 get your stuff was to find somebody to give you a key?
[page 17]
1 A Um-hmm.
2 Q Who did you have to find to get a key?
3 A Well if they had punched in on time and wasn't late,
4 usually the dry goods operator.
5 Q What do you mean if you had punched in on time and
wasn't
6 late?
7 A Well he had a bad habit of showing up late. This is 5
8 o'clock in the morning. The guy had the key to the dry
9 goods area. If he was late, we waited.

10 Q Did you punch in in the lunchroom when you'd first come
11 in?
12 A There was no punching in the lunchroom.
13 Q You didn't punch in in the lunchroom, right?
14 A You can't punch in in the lunchroom, there is --
15 There's a time clock in the lunchroom, isn't there?
16 A When did they install that?
17 There wasn't a time clock in the lunchroom?
18 A No.
19 So you never punched in in the lunchroom?
20 A Never.
21 Did you always punch in, from December of 1997 until the
22 time you left Barber Foods, did you always punch in on the
23 meat room clock in the meat room?
24 A Yes, and on the production floor clock, yes.
25 So do you have a name -- do you remember the name of the
[page 18]
1 guy that you usually had to obtain the key from?
2 A Who's that guy that was at that -- at the beginning or the
3 week? That was the guy. What was his name? The one you
4 took the deposition Tuesday, I believe it was?
5 MR. DIXON: Was it Kevin?
6 THE DEPONENT: Kevin, there we go.
7 MR. DIXON: Kevin Snow?
8 THE DEPONENT: Yeah, him.
9 Q Kevin Snow was the guy that you usually got the key from?
10 A Yeah.
11 Q How often -- you usually arrived at work at around 5
12 o'clock, right?
13 A Um-hmm, yes.
14 Give or take a minute or two either way?
15 A Yeah, yes.

16 And then you'd have to get the key from Kevin Snow, right?
17 A Yes.
18 Was he the only one who had a key?
19 A The only one that had a key that would let me have it
20 without having a discussion or an argument or a, Oh come
21 on, type.
22 Who else had a key?
23 A Let me see. Zareh. Let's see.
24 Who else that was there at 5 o'clock when you got there?
25 A Zareh. He was there -- always there at 4:30. He had a
[page 19]
1 key, and let's see, the other guy was Bob Lorrane
2 (phonetic). And then Doug Goodwin had access to the key
3 to the locker but not the key. They had this locker in
4 the management office, okay, that consisted of all the
5 keys to the plant in case you needed the keys, but you had
6 to have a special key to open it up. They called it the
7 key locker. So if you couldn't get in you had to tell
8 Doug, you had to get your gear, you had to hunt down Doug
9 who was in his office, tell him, you had to go into the
10 management office, unlock the key locker, get out the key
11 to the dry goods area, go down there and unlock it, let us
12 in.
13 Q And how frequently would it be that when you arrived at
14 work the dry goods door would not be open and that you'd
15 have to hunt down somebody to get a key?
16 A Once a week most of the time.
17 Well wait a second, once a week most of the time?
18 A Yeah.
19 Q Once a week to me -- how many days of the week did you
20 work?
21 A Five to six.

22 If you worked five to six days a week, once a week, I
23 guess at least the way I interpret it, is not most of the
24 time. In fact, it's least of the time. So which one --
25 A At least once a week then cause we were working on
the day
[page 20]
1 that he had off, which was usually Saturday. That would
2 be the day you couldn't find him.
3 Q So, you know, during the week --
4 A (Indiscernible)
5 Q During the week, Monday through Friday, --
6 A Okay.
7 Q -- if you showed up at 5 o'clock, the door was usually
8 open so you could go in get your stuff, right?
9 A No, had to be locked in accordance to the fact that
10 management was afraid of people going in there, helping
11 themselves, and stealing.
12 Q Well when you told me that it was about once a week
that
13 you would have to hunt somebody down to find your key,
14 what did you mean?
15 A Kevin Snow was usually there. When Kevin Snow was
not
16 there, then you'd have to do the key hunting and find
17 someone else to open up the door for you.
18 Kevin Snow was usually there, right?
19 A Yes.
20 Q And how many -- if you had to give me an estimate of
the
21 number of times per week that Kevin Snow was not there,
22 since he was usually there, how many -- and you had to
23 hunt somebody else down, how many times would that
happen?
24 A Twice.
25 Maybe twice a week?
[page 21]
1 A Yes.

2 Q Now once you went in and grabbed your stuff in the dry
3 goods, whatever you were getting there, where would you
4 go?
5 A Well, go punch in. After we'd put on the stuff we'd run
6 upstairs.
7 Q And that's -- I'm trying to take you step by step. At
8 some point you go to your locker, right?
9 A Yeah, that's right.
10 Q After you went to dry goods and picked up whatever
you
11 were picking up at dry goods, what would you do?
12 A Go to the locker, take off my street shoes, put on the
13 boots, make sure I had the bump hat, safety glasses, check
14 over, make sure they didn't get scratched or damaged,
15 clean them if necessary, proceed to put on the coat and
16 gloves and stuff in my pocket, put the earplugs, safety
17 glasses in the pocket, you put the shoes in the locker
18 along with winter coat if it was the winter, lock up the
19 locker, and grab my box and get ready to go upstairs.
20 Q And the box, when you say grab your box, that's the
box
21 that contained the extra gloves and --
22 A Yes.
23 And then would you go straight -- would you usually go
24 straight from the locker upstairs?
25 A Yes.
[page 25]
1 Q And when you'd open the door, the first thing you would
do
2 is dip your gloved hand in the iodine bath, right?
3 A Yes.
4 Q And then you'd proceed across the floor to the meat
room,
5 right?
6 A Yes.
7 Q And then the next thing you would do is swipe your card
in

8 the time clock?
9 A Punch in, yes.
10 Q Now did you have your apron on when you entered the
11 production floor?
12 A Oh yes, you can't tie that apron with the gloves.
13 Now let's talk about the -- once you actually got the key,
14 okay, or on the days when the dry goods thing was open,
or
15 once you got the key and you actually got in there, okay,
16 right in front of the rack where all the coats -- where
17 the coats were, and the hairnet and the earplugs, the
18 stuff that you had to get every day, okay?
19 A Right.
20 How long did it take you to just grab that stuff before
21 you could head to your locker? I'm not talking about
22 putting it on yet, I'm just saying you're already there,
23 how long did it take you to grab the stuff that you
24 needed?
25 A Oh, three to four minutes.
[page 26]
1 Q There wasn't any line there, right?
2 A No.
3 Q It takes you three or four minutes to grab that stuff, to
4 grab your coat, your hairnet, your apron, and your
5 earplugs?
6 A Well yes, because the rack itself is not basically -- they
7 packed clothes -- they packed as many uniforms on it as
8 they can. Because you're the first one there, you have to
basically do a little force job in order to get a single
10 hanger free so you can pull out your one coat.
11 Q It'd take you about three or four minutes to do that?
12 A And then you have to go through and you have to get
the
13 gear and stuff, and go out --
14 Q Well what gear and stuff? Tell me specifically what you
15 had to get.
16 A The hairnets, the earplugs, the gloves, and the liners.

17 Okay, I just want to make sure. If you think it takes you
18 three or four minutes, I'll accept that. I just want to
19 make sure that's your answer.
20 A Yeah, three minutes, yes, for that.
21 And then you go over to the locker. How long does it take
22 you to walk from dry goods to your locker?
23 A I never timed it.
24 Can you even give me an estimation?
25 A No, I cannot because I am not that good at estimating
[page 27]
1 walking times.
2 Q Once you arrive at your locker and you've got the stuff
3 that you picked up at dry goods, from the time you
4 actually arrive at your locker until you get all the stuff
5 on so that you're ready to leave to go upstairs, how long
6 does that take?
7 A That would be five minutes.
8 Q And how long did it take you to walk upstairs afterwards
9 to where you punch in?
10 A That would all deter-- you determined if the cleaning
crew
11 had set up water damns or not, because you, you know,
you
12 have to be careful to walk through water and puddles so
13 you don't slip, have slip and fall accidents. And it
14 varied. You know, sometimes five minutes.
15 To actually walk from your locker to the meat room
clock?
16 A Oh, you know, if they -- the sanitation crew is not doing
17 their job, they ended up having soap running down those
18 stairs and they ended up being turned into a nice little
19 slippery mess that the cleaning crew ends up having to
20 clean up before the production staff shows up, but if at
21 the time there's no one in a real rush to pick up all that
22 soap, that ends up sitting there.
23 So what's the average time it took you to walk from your
24 locker to the meat room clock?

25 A Five minutes.
[page 28]
1 Q Now at the end of the day when you're done, what clock did
2 you punch out on?
3 A The same clock I punched in on, the one that's in
4 production.
5 Q The one in the meat room?
6 A Yup.
7 Q So you would punch in -- punch out on the same clock that
8 you punched in on, right?
9 A Yes.
10 Q Then what would you do?
11 A Punch out and leave. Proceed and go down the same stairs
12 I came up in the morning, go down there -- they had
13 separation bins, one for the white coats, a trash can for
14 the disposables. Then after that you end up walking to
15 the locker room, you deposit the stuff that you have to --
16 oh wait, sometimes they had to wash the boots cause of --
17 I don't know how to describe it, slime, chick-- you know,
18 you ever do a chicken, sometimes you got that grease or
19 slime off of a chicken, that always hits the boots, so you
20 have to wash the boots. And then you put the boots away,
21 put the bump hat, the safety glasses, and retrieve the
22 coat and shoes, and then leave.
23 So on the -- I take it on the way to your locker, once you
24 leave the production floor, from the door leaving the
25 production floor until you get to your locker, you get rid
[page 29]
1 of your white lab coat, your hairnet, your rubber gloves,
2 your cotton glove liners, and your earplugs, right?
3 A Right.
4 Q And the ones that you have to deposit in a laundry bin
5 would be the cotton glove liners and the white coat,
6 right?

7 A Right.
8 Q Where were those laundry bins located?
9 A Usually at the bottom of the stairs.
10 Q And the ones that you'd throw away every day would be your
11 hairnet and your earplugs and your rubber gloves, right?
12 A Right.
13 Q And where did you usually throw those away?
14 A They were right next to each other.
15 Q So they'd be at the bottom of the stairs, too?
16 A Yes.
17 A trash bin, disposable laundry bin?
18 A Yeah.
19 Now did you usually -- how did you usually do that, did
20 you usually just sort of walk down the stairs, get in
21 front of those bins, and then kind of take everything off,
22 or were you taking stuff off as you're walking down the
23 stairs?
24 A No, I'd walk down the stairs and take it off there because
25 at the time when you get out there your boots are greased,
[page 30]
1 okay, and you have to watch yourself walking on the stairs
2 in the chicken fat that's on the boots.
3 Q When did you take your gloves off?
4 A Down at the bottom of the stairs.
5 Q You'd always keep your gloves on until you got down to the
6 bottom of the stairs?
7 A Yeah.
8 You wouldn't take them off --
9 A I think I took the blue ones off.
10 Q I mean after you swipe, you didn't take your gloves off to
11 -- as you're walking across the production floor or down
12 the stairs?
13 A Yeah, that I would mostly do.

14 Q Mostly. Mostly you'd take your gloves off before you ever
15 got to the bottom of the stairs, right, do that while
16 you're walking?
17 A Yeah, but you're on the production floor when you do that.
18 But you'd still do it while you were walking, right?
19 A I don't understand where that's leading.
20 I'm not sure I'm leading anywhere. You'd take your gloves
21 off while you're walking ordinarily, wouldn't you?
22 A Yeah.
23 Okay, that's the only point I was trying to make. Now how
24 long did it take you to actually take your gloves off?
25 A Oh, the gloves? A couple seconds.
[page 31]
1 Q How long does it take you to take your hairnet off?
2 A Well, once you get to the bottom of the stairs all that
3 was about three minutes.
4 Q How long does it take you - - estimate for me - - you said
5 it would take you a couple seconds to take your gloves
6 off, right?
7 A Um-hmm.
8 Q How long do you think it takes you to take your hairnet
9 off?
10 A A few seconds, I would say.
11 Q And how long do you think it takes you to take your
12 earplugs off?
13 A Almost the same time.
14 Q Would that be a few seconds again?
15 A Yeah.
16 Q How long does it take you to take your coat off?
17 A Well, first I have to take the apron off.
18 How long does it take you to take your apron off?
19 A Well, if a knot got bunched up it'll take a little longer,
20 but thirty seconds.

21 Now how about your coat?
22 A About thirty.
23 So if we add all that up we've got let's say thirty
24 seconds for the coat, approximately thirty seconds for the
25 apron, and a few seconds each for the -- you know, maybe
[page 33]
1 Q -- as it does to take it off?
2 No, it takes a little longer to put it on.
3 Q About how much longer do you think it takes to put it
on?
4 A About a minute-and-a-half longer because you have to
check
5 it to make sure that the stuff you're putting on is not
6 torn, broken, needs replacing, worn out, because the white
7 cotton liners are u-- they recycle those, they keep
8 washing. Sometimes when you're grabbing you don't
realize
9 there's a hole that ends up ripping bigger when you put
10 your hand in it, and the next thing you know you have to
11 go back and get another one.
12 Q So let's -- you've now dropped this stuff off that
13 belonged to the bin, and the -- the trash bin, okay. And
14 you're going from there to your locker, right?
15 A Right.
16 Q And I take it when you arrive at your locker you've still
17 got your rubber boots on?
18 A Um-hmm.
19 And you've got your back belt, bump hat and safety
20 glasses, right?
21 A Right.
22 Anything else?
23 A No.
24 Now have you -- usually as you're walking to your locker,
25 do you ever take your safety glasses or bump hat off?
[page 34]
1 A Yes.
2 Q You'd usually do that after you dropped your -- the stuff

3 off in the trash and the laundry bin, while you're walking
4 between there and the locker room, you usually I take it,
5 the normal practice would be to just take your hat off and
6 take your safety glasses off, right?
7 A Yes.
8 Q So when you get to the locker, what you've got left is
you've got to take your back belt off and your boots off,
10 right?
11 A Right.
12 Q How long does it take you to take your back belt off?
13 A Thirty seconds.
14 Q And how about your boots?
15 A Well, if I didn't -- they didn't go through washing
them,
16 about thirty seconds.
17 And if you had to wash them, where would you do that?
18 A Where would I do that?
19Q Yeah.
20 A Let's see. Usually a washing sink.
21 That was where?
22 A At the top of the stairs.
23 Oh, you'd do it at the top of the stairs before you came
24 down the stairs?
25 A Yeah, if they needed it.
[page 35]
1 Q If they needed it. And how often would they need it on a
2 typical week?
3 A That one varied. It depended on the product that was
4 being made, how much excess marination got spilled, was
5 the chicken extra, you know, had extra, you know,
6 runniness that day cause -- depending on how consistent
7 [sic] frozen or fresh it was determines how much fat or
8 grease you're stripping off.
9 Q Is there any way you can give me any estimation at all
10 that you feel comfortable with about how many times a
week
11 you'd actually have to stop and wash your boots on the

way
12 downstairs?
13 A Comfortably three days, at least three days a week.
14 Q And you say those were outside the production floor at the
15 top of the stairs, right?
16 A No, no, that one was inside the production floor.
17 oh, inside the production floor. Was it inside the meat
18 room or just inside the production floor?
19 A Production floor.
20 So you'd punch out at the meat room, --
21 A Yes.
22 -- walk across the produc-- well where on the production
23 floor was it?
24 A Right next to the exit.
25 And when you say sink, I mean what do you mean?
[page 36]
1 A Deep stainless steel sink.
2 Q What do you do, walk into it?
3 A No, I end up balancing on one foot, take the boot off and
4 proceed to put it under the stream.
5 Q And then there'd be like a hose that you just --
6 A No.
7 Q You take the boot off, --
8 A The pedals are on the floor and you'd have to balance and
9 hit one foot on the water while you're doing that.
10 There's no hand pedals in that place, it's all foot.
11 Q Okay, so you'd actually operate the water with a foot
12 pedal?
13 A Yes.
14 Q So you take one boot off, --
15 A And you're balancing while I had one foot on the water,
16 and you're rinsing the boot off.
17 Q How long do you think it took you to do that?
18 A Well that deter-- that depended on how dirty the boot
was.

19 -Q Can you give m a range of like the least amount of time,
20 you just had to wash it a little bit, as opposed to - -
21 A Five minutes.
22 It would literally take five minutes sometimes?
23 A Yes.
24 What's the least amount of time?
25 A That is the least amount of time.
[page 37]
1 Q What's the most amount of time?
2 A Fifteen.
3 Q So you're telling me that sometimes at the end of the day
4 you literally would spend fifteen minutes at that sink
5 washing boots?
6 A Yes.
7 Q Now after you removed your stuff to the locker and put it
8 in the locker, how long would it take you -- let me
9 withdraw that. Let's go from -- can you give me an
10 estimate on days where you didn't have to wash your boots,
11 okay, where you'd just, you know, punch out, go
12 downstairs, throw the stuff away and go to your locker and
13 then out the door, from the time you swiped your card,
14 punched out, until you're out the door, the plant exit.
15 How long did that generally take?
16 A Well depending on floor traffic, if I had to dodge a lot
17 of people, no more than five minutes maximum.
18 So on days that you did not have to wash your boots, it
19 generally, normally took you about five minutes from the
20 time you swiped your card until you were actually out the
21 door?
22 A Yes.
23 And I take it there could be some variables in that
24 depending upon how crowded the hallways are.
25 A And the locker room.
[page 38]

1 Q The hallway and the locker room, right?
2 A Right.
3 Q But that would be the average?
4 A I'd say. that would be the average.
5 Q And how much of that time -- if you were to just -- let's
6 assume for a minute that you worked the same place you
7 work and you didn't have to wear any gear, you could just
8 swipe your card and go right straight down the stairway,
9 out the plant. How long do you think it would actually
10 take just to walk, walking time?
11 A Two minutes.
12 Q Now on days when you would actually have to stop and
wash
13 your rubber boots, can you give me an average amount of
14 time that you think it would take from the time you swipe
15 your card until you get everything done and you're out the
16 plant door?
17 A Well, if the boots are extremely dirty I'd end up being
18 twenty minutes; if they weren't, I'd end up being ten.
19 Q I take it the walking time is the same?
20 A Yeah, about the same foot walking time.
21 Did you get a lunch break in the meat room?
22 A Yes.
23 And how long was your lunch break?
24 A Thirty minutes.
25 And what did you -- other than the obvious, which is
[page 39]
1 eating lunch, what did you usually do during your lunch
2 break?
3 A Well I never left the cafeteria.
4 Q You normally would not leave the cafeteria?
5 A No.
6 Q You didn't go outside and smoke?
7 A No.
8 Q And who kept track of your lunch break?
9 A Doug.
10 Q Doug Goodwin?

11 A Yes.
12 Q Do you -- from December 1997 until the time that you left
13 Barber Foods, are you claiming that Doug Goodwin on
14 occasion would shave your lunch breaks, that you didn't
15 get your full thirty minutes?
16 A Yes.
17 How many times?
18 A That was basically -- it was -- determined half the time
19 by production, what the production needs were.
20 Q Explain that to me.
21 A Well, if the production was working very hard on the meat
22 and stuff, you ended up losing time because your breaks
23 were, you know, staged at a set level and if you didn't
24 leave on time, it was tough luck.
25 Now in addition to a lunch break, what other breaks did
[page 40]
1 you get?
2 A The fifteen-minute and ten-minute.
3 Q But with respect to the lunch break itself, are you
4 telling me that you think there were occasions where you
5 did not actually get a thirty-minute lunch break?
A Yes.
7 Q How many times do you think that happened?
8 A By month or week?
9 Q Let's try by month.
10 A I'd figure at least five times.
11 Q You think at least five times a month?
12 A Yes.
13 Did you ever complain to anybody about that?
14 A What good is complaining? No one listens.
15 Did you ever complain to anybody about it?
16 A Yes.
17 Who did you complain to?
18 A Doug.
19 Anybody else?

20 A Mentioned it to Bob Lorrane.
21 Anybody else?
22 A No.
23 What was Doug's response?
24 A Doug's response was he's just doing what management told
25 him to do.
[page 41]
1 Q What was Bob Lorrane's response?
2 A Go talk to Doug.
3 Q And on those approximately five occasions per month that
4 you believe you did not get your full thirty minutes, how
5 much time do you think you lost; in other words, how long
6 do you think your lunch break actually was as opposed to
7 thirty minutes?
8 A Twenty.
9 Q That's your best estimate?
10 A Yes.
11 Q Did you ever keep track of it?
12 A Yes, but I don't have the record anymore.
13 Q When you say "yes but you don't have the record anymore",
14 well what did you do to keep track of it?
15 A I wrote it down in a little booklet.
16 And what would you write down?
17 A The time I punched in, the time I punched out.
18 And how long did you keep that booklet?
19 A Until the day I quit.
20 And what type of booklet was this; was this a --
21 A Just a calendar book.
22 And what you'd do is the time you, what, punched in in the
23 morning and punched out in the afternoon?
24 A No, I'd be recording how much they shaved my lunch break
25 off

[page 42]
1 Q Oh, okay, so you did it for the specific purpose of
2 recording now much time was shaved off your lunch
break?
3 A Yes, but I ended up shredding it.
4 Q Why did you do that?
5 A Because I left Barber Foods in a not-so-nice-of-a-spirit,
6 and basically was stressed out, and I had myself a little
7 stress relief scenario.
8 Q Which was to shred evidence that you could use to
maybe
9 hold Barber Foods liable for Wage and Hour violations?
10 A No, basically I shredded everything, you know, receipts
--
11 you know, Barber Foods has a good way of burying
12 everything.
13 Q And how soon after you left Barber Foods did you
actually
14 get rid of this notebook or calendar --
15 A That day.
16 Q -- that you actually kept track --
17 A That day.
18 Q And for how long back had you been keeping that
calendar?
19 A Only a year.
20 Were you ever required to visit the medical office during
21 a lunch break?
22 A No, but it was recommended.
23 Who recommended it?
24 A Zareh and Doug.
25 Didn't you have to -- if you had to visit the nurse,

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	CIVIL NO. CV-00-371-P-C
	*	
BARBER FOODS,	*	
	*	
Defendant.	*	

DEPOSITION of ABDELA TUM, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 25, 2001, before Roxanne DiMarco, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.
Translator:	Ghezai Menelik

[page 10]
1 A Yeah.
2 Q --have to put on a beard cover?
3 A Yeah.
4 (Short interruption; the deposition continued:)
5 Q Do you wear rubber gloves every day?
6 A Yeah.
7 Q Do you wear the cotton glove liners every day?
8 A Sometimes. I mean I--I do now, yes, it's cold, then I do
9 it, yes.
10 Q Are there times when you don't use the glove liners?
11 A When--after break, or first--the--for break, I have to,
12 you know, sit my stuff and need to be touched by like

13 (Indiscernible) and then I do, and after break I take it
14 off, (Indiscernible) the gloves.
15 Q So do you use the glove liners depending upon--You always
16 use the rubber gloves, is that right?
17 A Mostly.
18 Q Mostly?
19 A Yeah. I mean usually, yes, rubber gloves because I'm
20 housekeeper and I have to, yes.
21 Q Okay. And then I take it you use the cotton liners
22 depending upon how cold it is?
23 A First thing in the morning.
24 Q Do you always use an apron?
25 A Apron?
[page 16]
1 Q What is the--what do you wear on the first shift that you
2 didn't wear on the second shift, or what did you wear on
3 the second shift that you didn't wear on the first shift?
4 A I'm in second shift production--
5 (Deponent and Translator converse.)
6 THE TRANSLATOR: Okay. The first shift there are
7 eyeglasses, there were eyeglasses, but second shift they don't.
8 And to get your items, in the second shift you have to wait a
9 long time. I think they are--they line up--
10 A They line up.
11 THE TRANSLATOR: --a little bit.
12 A Yeah.
13 THE TRANSLATOR: They line up.
14 (Deponent and Translator converse.)
15 THE TRANSLATOR: And also they have to wait a long
16 time in the second shift for parking. Parking problem. They
17 have parking problem.
18 Q Abdela, where do you--where do you get your white coat?

19 Where do you pick up your white coat every day?
20 (Deponent and Translator converse.)
21 THE TRANSLATOR: We pick it from the cage. The cage
22 is along the (Indiscernible) side, on the other side of it.
23 That's where we pick it.
24 Q Let me--I'll do it this way. You get your--do you get
25 your white coat from a rack?
[page 19]
1 after you became a production associate or a housekeeper.
2 Okay?
3 A Okay.
4 Q Did you have a locker?
5 A Yeah.
6 Q What did you keep in your locker?
7 (Deponent and Translator converse.)
8 THE TRANSLATOR: His work clothes. My work clothes.
9 Q What work clothes?
10 A The blue coat.
11 Q Do you wear that blue coat under--
12 A Yeah. White. White coat.
13 Q And is that your own blue coat or did the company buy
that
14 for you?
15 A No, I buy it from the--
16 Q And that's to keep you warm?
17 A Yeah.
18 Q Is there anything else that you keep in your locker?
19 A My hat.
20 Q That's the bump hat.
21 A Safety glass.
22 Q And your safety glasses. Do you keep your back belt
23 there?
24 A Yeah, belt--belt also.
25 Q Do you keep any tools there?
[page 22]
1 Q Which--which entrance do you cone into the plant in?
2 A Most of the time--before I used down the side. Now

there's a parking problem, was construction. After
construction, mostly we don't got to park so we park
everywhere on the streets. But--or usually I park beyond
parking.
Q Let me show you a map and ask you to tell me which--
A Yeah.
Q --which entrance you usually--And I--I know there were
some changes with- I
A Yeah, changes.
Q --while the construction was going on, but which one
you
usually come in, if you can. And I'll tell you--I'll--
I'll try to show you. This is the--this will help you
out. This is the ground floor.
A Yeah.
Q Here's the cafeteria.
A Yeah.
Q There's the cage.
A Yeah.
Q Here's the entrance by the cafeteria with the hallway
that
goes up, and here's the entrance over by the stairways
that--that are by the cage. Do you--did--Where do you
usually come into the plant?
A Like I say, right now, after construction, we can find to
[page 23]
park this side, we're gonna come this way. All right.
But I usually park this side.
Q If you usually--you usually park on the St. John Street
side.
A Now, now, after the construction, St. John Street, but
before, for year and year and year, the big parking, the
end, the parking say shipping-receiving, you know.
Q Over by shipping and receiving.
A That's right. That's where I park, I was, but now there's
no place so I have to go back again to find no streets
parking and park in the street and I go back.

12 Q And then once you park on the street, which--do you
13 usually come in on the street entrance?
14 A When I park on the street, I have to get the street--it's
15 St. John Street? (Indiscernible) Street.
16 Q Sorry. So you come in the entrance on St. John Street
17 now.
18 A Now. Right now.
19 Q Okay. And--and how long have you been doing that?
20 A Maybe a month, month-and-a-half, sometimes. I--I
mean not
21 usually. Sometimes. If I get--got to find to park, I
22 park over there. If I find--if I find park, I park down.
23 Q And so for approximately a month or a month-and-a-
half-
24 A Yeah.
25 Q --you've been coming in the St. John Street-
[page 27]
1 Q When you went to the locker would you put all that stuff
2 on, before you went to the cage?
3 A Yes. Sometimes I--I mean I will wear it, I'm trying to
4 get locker, and then I wear my coat out and then sometimes
5 I--yeah.
6 Q I--if I remember correctly, in your locker you kept your
7 blue coat.
8 A Yeah.
9 Q Safety glasses.
10 A Yeah.
11 Q Bump hat.
12 A Yeah.
13 Q And back belt. Is that right?
14 A That's right.
15 Q How long did it take you to put on those items?
16 A Depend, like from eight, fifteen, till ten minutes if--
17 sometimes, you know. All things, to go upstair, right?
18 Q No.
19 A Mmm.
20 Q All I'm asking you about right now-

21 A Yeah.
22 Q --is those four things- 2
23 A Yeah.
24 Q --that you kept in your locker.
25 A Yeah.
[page 28]
1 Q When you would come in and go to your locker and get those
2 four things.
3 A And then to go punch? Okay.
4 Q No. I'll ask you about that later. These four things.
5 How long did it actually take you to put on your back
6 belt, put on your safety glasses, put on your bump hat and
7 the blue coat? Your best estimate of how long it would
8 take you to do that.
9 A Eight minutes.
10 THE REPORTER: How many?
11 (Deponent and Translator converse.)
12 THE TRANSLATOR: Eight to ten minutes.
13 Q And after you put that stuff on,-
14 A Yeah.
15 Q --you would next go to the cage?
16 A Yes.
17 Q And from the cage, you would get--well, did you usually
18 pick up the white coat from the rack before--
19 A Yes.
20 Q --you got the stuff from the cage or after you got the
21 stuff from the cage?
22 A White coat?
23 Q Yes.
24 A After I dress, and then-
25 Q Okay. I understand that. But from the locker,-
[page 29]
1 A Yeah.
2 Q --from your lockers to the cage, did you usually pick Up
3 the white coat on the way--

4 A Oh.
5 Q --to the cage?
6 A Yeah, first white coat and then I go to cage.
7 Q How long do you believe it actually took you to pick your
8 white coat off the rack and put it on and button it up?
9 A Before I go to cage?
10 Q Yes. Just-
11 A Just white coat.
12 Q Just the white coat.
13 A Say minute-and-a-half. Sometimes. There's people around
14 you and stuff, some of--you know, as--depending.
15 Q And the--and then at the cage you would actually pick up a
16 hairnet.
17 A Glove, white glove. I mean blue glove.
18 Q Hairnet, beard cover, blue glove,--
19 A White tie.
20 Q --and earplugs, right?
21 A Yeah. Is white ties, there's moustache.
22 Q When you say white-
23 A White tie. I usually take white tie with me, yes, for all
24 my job. White ties, is it-
25 (Deponent and Translator converse.)
[page 30]
1 THE TRANSLATOR: He calls a white tie, but that is
2 used for tying whatever he ties with. This is for tie, it's a
3 kind of string, for line up. So he picks it up. It's white.
4 Q Is that something that you bring yourself from home or is
5 that something--
6 A No, no. From Barber Food.
7 Q And where do you get that?
8 A From cage. White tie. I usually have white tie, twenty
9 white ties every day. Yeah.
10 Q The stuff that you get from the cage,-
11 A Yeah.

12 Q --the hairnet, the beardnet, the gloves, and the earplugs,
13 how long--do you usually put those on right there?
14 A Well, it depends. Sometimes people in front of me, I have
15 to wait, and well it, you know, maybe two, three minutes
16 sometimes, just get there and just have, you know, take
17 everything and then put it. Two or three minute, four
18 minute maybe. If I'm no rush.
19 Q On the first shift, Abdela, can you--what is your best
20 estimate of the usual waiting time that you have to get
21 whatever you need to get out of the cage?
22 A Cage is-
23 Q First shift.
24 A First shift, is like--maybe sometimes two minutes, three
25 minute. That's, you know, I got (Indiscernible) three
[page 31]
1 minutes and over that, just to go over there and have, you
2 know, sometimes two, three people, and sometimes on
3 person, and then I got there, wait, and then just take my
4 stuff.
5 Q How many people--In the first shift is there usually a
6 line?
7 A Not much.
8 Q At the cage?
9 A No, not like second shift. It's--
10 Q First shift, what is the--what's the typical line? If
11 there's a typical line, how many people generally are in
12 the line--
13 A Typically--
14 Q --on the first shift?
15 (Deponent and Translator converse.)
16 THE TRANSLATOR: Normally up to five people.
17 Q Normally up to five people.
18 A Up to.
19 Q On the second shift, when you--when you were production
20 associate on the second shift,-

21 A Yeah.
22 Q --normally how many people would there be in line?
23 A Like ten, twelve, sometimes.
24 Q Ten to twelve people?
25 A Yes.
[page 32]
1 Q Would that be a typical--would that be a typical day that
2 there would be ten or twelve people waiting in line on the
3 second shift?
4 A I remember the second shift, there was--everything came
5 closest, the way, (Indiscernible) , there was a lot of
6 people around. Once they come together and then just
7 stuck over there, that's what they do.
8 (Deponent and Translator converse.)
9 THE TPJNSLATOR: Eight to ten people. Typically
10 eight to ten people.
11 Q And when--when you're--when you were on the second
shift,
12 if there was that typical line of eight to ten people, how
13 long would it typically take you to reach from--to go from
14 the back of that line to the cage?
15 A Well it depends. Sometimes seven minutes, eight
minutes.
16 I'm not--I'm not timing at the time I was, but I give
17 eight minutes probably you're gonna wait, if there's a lot
18 of people around. First come, first serve, so--
19 Q After you get your stuff from the cage, what do you do?
20 A Go upstair.
21 Q Do you-
22 A For me, for housekeeper. So I go upstair, right away.
23 But other people, they go back to cafeteria.
24 Q So is--while you've been a housekeeper, anyway, once
you
25 pick up your stuff at the cage, you go right upstairs,
[page 38]
1 Q --at Barber Foods?
2 A Actually there's sometimes a line to wait, but after you

3 punch it, I punch out--
4 Q There's a. line--
5 A Yeah.
6 Q --sometimes to wait to punch out.
7 A Yeah.
8 Q But you're still being paid--
9 A That's right.
10 Q --before you punch out. Right?
11 A Yeah.
12 Q Okay. From the time that you actually make it through
13 whatever line is there and swipe your card, so you've
14 punched--so you've punched out--
15 A Yeah.
16 Q --until you--
17 A Out the- I
Q --until you're out the door by the cafeteria,--
19 A Yeah.
20 Q --how long do you usually--how long does it usually take
21 you?
22 A Well, punch out, and then take whole stuff, something like
23 glove you usually throw away, and then like white coat and
24 then white liner and then put it back where it belong, and
25 have to go locker, take your coat and whatever you wear,
[page 39]
1 like safety glass, coat, and hen put in your locker, you
2 know, close your locker, I can--like eight or nine
3 minutes.
4 Q So you say usually from the time. you actually swipe your
5 card--
6 A Yeah.
7 Q --until you leave the plant,--
8 A Yeah.
9 Q --it takes you about eight or nine minutes.

10 A Yeah. If I'm rush, yes, it take-
11 Q Okay. How long, if--if you didn't have to take anything
12 off,-
13 A Yeah.
14 Q --if you were wearing regular street clothes,-
15 A Um-hmm.
16 Q --from the time you swipe your card to go down the
stairs
17 and walk out the plant--
18 A (Indiscernible)-
19 Q --and out the door, how long do you think that would
take
20 you? If you didn't have to go to your locker, if you
21 didn't have to take anything off.
22 A Just straight?
23 Q Just straight.
24 A Maybe three minutes.
25 Q Now I want to make sure I understand where you take
[page 40]
1 everything of f and where--where you put it off--and where
2 you put it. While you're--while you're--before you
3 actually punch out, do you remove your--your sleeve
covers
4 on the production floor before you even punch out and
5 throw them away?
6 A After I punch out.
7 Q Okay. Do you take anything off and throw it away before
8 you punch out?
9 A No.
10 Q Okay. There are some trash bins where you can take off
11 your rubber gloves and your sleeve covers and throw them
12 away on the production floor, right?
13 A Sometimes, yes.
14 Q Do you ever do that?
15 A Well, when I punch out, glove I can throw away, yes,
but
16 you have white coat, all stuff, yeah. Only gloves can

17 throw away.
18 Q Okay. Before you punch out you can throw away your rubber
19 gloves--
20 A Just rubber gloves.
21 Q --and take your sleeve covers off and throw them away
22 too,-
23 A And (Inaudible)-
24 Q --right?
25 A Yes.
[page 41]
1 Q Okay. Do you ever do that?
2 Yes.
3 Q Do you do it--is--Is it most of the time? For example if
4 there's a line before you can--before you can actually
5 swipe your card, don't you most of the time take your
6 sleeve covers and your rubber gloves and throw them away
7 before you punch out?
8 A (Indiscernible) this, the blue gloves I--I do not throw
9 away.
10 Q How about your sleeve covers?
11 A (Indiscernible) work and then I come out. I mean sleeves
12 I take with me, right away outside. But I can do that, I
13 can throw, but I remember, you know, just punch out and
14 then all things. It's easy to get (Indiscernible) throw
15 away.
16 Q And then as you're--as you're heading down to go down the
17 stairs to your locker, do you throw away your hairnet,
18 beard cover, and earplugs?
19 A That's true.
20 Q The long hallway?
21 A Yeah.
22 Q So do you take those off while you're actually walking
23 down the hallway?
24 A While you're walking down the stairs there's a trash

25 barrel. You have to find trash barrel where--and throw
[page 46]
1 choices, I asked him--You are asking him which of these
do you
2 do? Am I right?
3 MR. STEVENS: Which is most typical of what he does.
4 THE TRANSLATOR: Yes.
5 (Deponent and Translator converse.)
6 THE TRANSLATOR: The dropping off whatever he have
as
7 he goes on was not the formerly, it just came as of late. But
8 before, long time ago, we used to just go to the end and
right
9 there we dropped everything.
10 Q So now--If I understood that answer right, I take it now,
11 while you've been a housekeeper, your normal routine is
to
12 start taking stuff after while--after you've swiped out,
13 while you're walking down the hail to the end, you're
14 taking stuff off, and if the trash bags aren't full you're
15 throwing it in them, and if they are full you wait until
16 you find one that's not full. Is that right?
17 A Yeah. Right now, yes. But talking about long term, like
18 say three months, four months ago, before new
19 instructions, they don't put any trash barrel in the
20 corner so we have to go down there, near cafeteria, you
21 have to take all your stuff, throw away, there's a barrel,
22 that's where you do. That's all I can say.
23 Q And then after you've thrown your stuff in the laundry
bin
24 and in the trash bins, then you go to your locker? Or do
25 you go to your locker first?
[page 49]
1 the--the entrance by the cafeteria where you--where you
2 usually walk through and go right straight up the spiral
3 II staircase where you usually go and swipe your card, how
4 long do you think it would take you to go from the

5 entrance up before you swiped your card?
6 A If I don't do locker or if I don't do anything, it would
7 take me five minutes.
8 Q Five minutes at the most?
9 A Yeah. Just white coat and then I go can right up,
10 (Indiscernible) this.
11 Q Okay. Is there normally a line in order to swipe in in
12 the morning? Not at the cage now, but--but up at the time
13 clock where you punch in, is there usually a line?
14 (Deponent and Translator converse.)
15 THE TRANSLATOR: Am I correct you are asking him if
16 there are people waiting on the line? Is that--of the--
17 MR. STEVENS: Is there usually a line at the time
18 clock--
19 THE TRANSLATOR: At time clock.
20 MR. STEVENS: --where he punches in.
21 THE TRANSLATOR: Yeah.
22 (Deponent and Translator converse.)
23 THE TRANSLATOR: Yes. There are people.
24 Q Even--even as a--You've been a housekeeper for almost
two
25 years?
[page 50]
1 A Are you asking me for me or for other people?
2 Q I'm asking you for you.
3 A Okay. For me is I have to go direct back out here, where
4 I punch out all the time.
5 Q Yes.
6 A For the other peoples I see they line up to punch in.
7 THE TRANSLATOR: Are you--
8 MR. STEVENS: I'll ask--
9 THE TRANSLATOR: --speaking of the morning time?
10 MR. STEVENS: Yeah.
11 Q In the morning, when you--when you punch in, as a
12 housekeeper--You've been a housekeeper for almost two
13 years,--
14 A Yeah.

15 Q --am I right? As a housekeeper when you punch in, you
16 punch in, you go right straight to the pack-out 2 line and
17 punch in, right?
18 A Um-hmm.
19 Q Is there usually a line that you have to wait for at pack-
20 out 2 to punch in?
21 A For me?
22 Q Yes.
23 A No.
24 Q Now in order to do that, you go by some of the other
25 lines, of--of the other time clocks where the regular
[page 51]
1 production line workers are, right?
2 A Yeah.
3 Q Is there usually a line waiting at the time clock for the
4 production workers?
5 A Yes. Absolutely.
6 Q This is in the first shift.
7 A Yeah.
8 Q Right?
9 A Yeah.
10 Q How long are those lines, usually, at those time clocks?
11 A Well, there's one group (Indiscernible) one group like
12 thirty people, twenty-five people, they have to wait at
13 the time clock, punch in and it say--it say thank you, you
14 have to wait a couple second, and then everybody just
goes
15 the same, maybe take 'em sometimes five, seven minutes
to
16 wait, the line. I don't know, that's what I see, it's
17 people that wait. Yeah.
18 Q Are you aware of any times since you've been a
production
19 worker, you know, after November 1997, that you haven't
20 gotten your full thirty-minute lunch break?
21 A No.
22 Q Have you been required--Have there been any

occasions
23 since you've been a production worker, since November
24 1997,--
25 A (Indiscernible)
[page 52]
1 Q I'm sorry.
2 A No, I mean (Indiscernible) and sometimes I miss, so
we've
3 got to tell him, to ask him.
4 Q Yeah. Since--since you've been a production worker or a
5 housekeeper in November 1997, have there been any times
6 when you have been required to visit the nurse's office
7 during your lunch break?
8 (Deponent and Translator converse.)
9 THE TRANSLATOR: Well, during the second shift, is
10 afternoon, they used to call him up to come by 2:15,--
11 THE DEPONENT: 2:30.
12 THE TRANSLATOR: 2:30?
13 THE DEPONENT: Yeah.
14 THE TRANSLATOR: 2:30. But where he's supposed to
15 come at 3:45?
16 THE DEPONENT: Exactly.
17 (Deponent and Translator converse.)
18 THE TRANSLATOR: To the nurse.
19 THE DEPONENT: Yeah, the nurse, sometimes.
20 Q So sometimes when you work on the second shift,-
21 A Yeah.
22 Q --while you were working on the second shift, an
23 appointment would be made for you to visit the nurse-
24 A Yes. Yeah.
25 Q --before the shift began, around 2:30,--
[page 53]
1 A Correct.
2 Q --is that right?
3 A Yes.
4 Q Since you've moved to the first shift, have you been
5 required to see the nurse or--or made an appointment to

6 see the nurse before your shift starts?
7 A No.
8 Q Okay. Have you had appointments made for you or been
9 required to see the nurse during your lunch break?
10 A With some people they do, but not me. Some people
they
11 do.
12 Q Has anybody at Barber Foods threatened you or
retaliated
13 against you in any way--
14 A Yes.
15 Q --because of your being a part of this lawsuit?
16 A Exactly.
17 Q I take it your answer is yes.
18 A Yes.
19 Q Okay. Who has done that?
20 A Well some-
21 Q I don't need to know what they did yet. What I'm--what
22 I'm going to do right now is I just want to get the names
23 of-
24 A Yeah.
25 Q --anybody that you believe has threatened or retaliated
[page 61]
1 shift actually starts?
2 A No. I punch in that time, and then I have to prepare all
3 my stuffs, you know, there is a lot of things to have to
4 prepare to--
5 (Deponent and Translator converse.)
6 THE TRANSLATOR: There are things that I have to
7 prepare before the production comes.
8 Q Okay. Has the cage operated in the same way for the last
9 four years, or have there been any changes?
10 A I believe maybe the cage, maybe three years? I don't
11 know. Something like this.
12 Q That's how long the cage has been there?
13 A Yes. (Indiscernible) remember it. But before that I
14 don't know, I was (Indiscernible) so-

15 Q So were there any changes in the way the cage operated in
16 the last three years?
17 A Yeah.
18 Q What changes?
19 A Change is you have to go cage and then get your stuff.
20 Before that was, you know, they put somewhere a
21 (Indiscernible) and then you can collect, you know, what
22 you need. But now they change, yes.
23 Q But since the cage has been open, have there been any
24 changes in the way it's operated or has it been the same
25 for the last three years?

Exhibit 6

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.	),
Plaintiffs,	) Docket No.
	) CV-00-3 71-P-C
vs.	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30(b) (6) DEPOSITION of BARBER FOODS, INC. (Jeffrey David Shaw), taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 13, 2001, commencing at 9:15 A.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine.

[page 19]

1 lockers in the maintenance room itself, so the maintenance
2 guys don't have any lockers there.
3 Q. Okay. All right. So with regard to personal
4 protective equipment that the maintenance workers wear, how
5 do they find out each day what personal protective
6 equipment they're supposed to be wearing for that day?
7 A Okay. Your term personal protective equipment, is to
8 me not - - from a maintenance standpoint, I don't think of
9 hair nets, beard nets, rubber gloves as personal
10 protective equipment. I think of that more as product -
11 protecting, so are you including all that?
12 Q. Right. Whatever they have to wear that is different
13 than their street clothes.
14 A. Okay. Every day, maintenance, when they come into the

15 plant, they're told that steel toed boots are required at
16 all times for maintenance. When you enter the production
17 areas, you have to have a hair net on every day without
18 exception. If you have a beard, you have to have a beard
19 net on without exception. And coveralls or a lab coat as
20 well as ear plugs and safety glasses.
21 Q. Okay. Those are what they always wear?
22 A. What they always wear.
23 Q. At least with respect to the beard nets and the hair
24 nets if they go in the production floor?
25 A. Yes, if they're not -- well, go ahead.
[page 20]
1 Q. And if they're not going on the production floor?
2 A. If they're not going on the production floor, they
3 have to use safety glasses and steel toed work boots,
4 that's it.
5 Q. They wear safety glasses regardless of whether they
6 are doing a job right then?
7 A. Uh-huh.
8 Q. Any time they're in the plant?
9 A. Any time they're in the plant as of, I think it was,
10 February -- it was around February or March of
2001 that we
11 implemented a safety glass policy throughout the plant to
12 try to cut down on injury rates.
13 Q. And prior to that -- I mean, how did that new policy
14 change the old policy, how was it different?
15 A. The old policy, safety glasses were not required
16 unless you were doing some form of spark producing
17 equipment task or any type of hammering, things like that.
18 Q. So these items that are -- are always required,
19 routinely required, are they issued to the maintenance
20 workers and they keep them or did they have to obtain
some
21 of them each day?
22 A. Every day, they have to obtain either a lab coat or
23 overalls, coveralls, as we call them. As far as steel toed

24 boots, they're issued them once a year. It's up to them to
25 make sure they get them on before they enter the
production

Exhibit 7
Deposition of: Helen Lamphier -- 8/15/01.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MAINE
3
4
5 ABDELA TUM, et al.,)
6 Plaintiffs) Civil Action Docket
7 v.) No. : CV-00-371-PC
8 BARBER FOODS, INC.,)
9 d/b/a BARBER FOODS,)
10 Defendant)
11
12
13
14 DEPOSITION OF HELEN LAMPHIER, taken pursuant
15 to notice dated August 9, 2001, at the law offices of
16 William Nugent, 75 Pearl Street, Portland, Maine, on
17 August 15, 2001, commencing at 10:11 a.m., before
18 Jennifer A. Ridenour, a Registered Professional
19 Reporter, a Notary Public in and for the State of Maine.
20
21
22 APPEARANCES:
23 TIMOTHY B. FLEMING, ESQ., and
24 CHARLES R. DIXON, ESQ., FOR THE PLAINTIFFS.
25 GRAYDON G. STEVENS, ESQ., FOR THE
DEFENDANT.

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	Mr. Stevens	79
	Mr. Fleming	83

[page 7]

A. No.
Q. And what sorts of duties do you perform in the cage?
A. We pass out the supplies, like gloves, hair nets, earplugs, beard nets, and I pass out cook codes.
Q. Cook codes.
A. And other supplies for the machinery.
Q. Do you pass out anything -- anything else besides what you've just named?
A. There are several things in there, like scissors and different things, palletizing gloves.
Q. What is a palletizing glove?
A. It's those heavy gloves with the rubbery bumps on them.
Q. And which sorts of employees require those?
A. Actually, the ones that palletize are the ones that ask for those gloves.
Q. I guess I need a little edification. I'm not sure what palletizing is.
A. The boxes, once the boxes are packed, and then they have to put them on the pallets and stack them up.
Q. So are those shipping and receiving employees that need those, or are they line workers?
A. It's the rotating line workers. They're assigned different jobs every -- maybe every hour, two hours,

[page 13]

finish and then go ahead and answer the question.

2 So do you hand out the hair nets from behind the
3 cage? Do you have to give that to each employee as they
4 come up?
5 A. Yes.
6 Q. And beard nets the same way?
7 A. Yes.
8 Q. And what about the earplugs?
9 A. Same.
10 Q. Same thing?
11 A. Same way.
12 Q. And do you hand out -- in previous testimony we've
13 discussed protective sleeves that some employees wear.
14 Do you hand those out at the cage? First of all, do you
15 know what sleeves I'm referring to?
16 A. Yes.
17 Q. Do you hand those out at the cage?
18 A. Only the heavy-duty ones. The lightweight ones go
19 upstairs in a bucket because they need so many of them.
20 Q. And the heavy ones, can you describe those a
21 little bit for me?
22 A. Those they use in the meat room where they grind
23 the meat.
24 Q. And are those disposable?
25 A. They are disposable.
[page 14]
1 Q. So -- okay. So only -- only the meat room
2 employees require those sleeves?
3 A. Yes.
4 Q. So no other employees come to the cage to pick up
5 sleeves?
6 A. No.
7 Q. And aprons, do you hand out aprons at the cage?
8 A. Only the heavy ones to the meat room. The others
9 go in packages in the white buckets that they take
10 upstairs.
11 Q. And how many employees are -- work in the meat
12 room and require either the sleeves or the aprons?

A. We only have -- we only have one or two that ask for the aprons and sleeves.
Q. And how do you -- do you recognize those people by face and just give the equipment to them, or do they ask you for the equipment?
A. Those people ask.
Q. They ask?
A. Yes.
Q. Okay. So if an employee comes up -- if a meat room employee comes and asks for a protective sleeve, what is your next step?
A. Just go to the shelf and get a pair of sleeves for him.

[page 20]

other -- do you give out tools at the cage also?
A. Well, yes, I do. Cook codes.
Q. Okay. Can you explain what a cook code is?
A. It tells what the name of the product is, like Cordon Bleu or Kiev. We have so many it would be hard to name all of them.
Q. And how many employees come to the cage to pick up cook codes?
A. Four or five.
Q. Four or five. And where are the cook codes kept?
A. Right to my left at the window there's a shelf.
Q. And how do you know which cook code to give an employee who requests one?
A. They look at their paper to see what they'll be running that day. Then they ask for the certain cook codes. And everything is marked with a name on it, each drawer that holds the codes.
Q. So what do you mean by that?
A. We have little containers with all these separate little drawers, and on the front we have a paper with the name of the cook code or whatever numbers they need.
Q. So does each container have a separate cook code?

23 A. Yes, it does.
24 Q. So the employee asks for a certain cook code, and
25 then what do you do after that?
[page 21]
1 A. I just look for that cook code on the paper and
2 pull the drawer open. They usually want two at least,
3 so I get them two.
4 Q. Are there ever times when you look in the
5 container and the cook code that you're looking for is
6 not there?
7 A. Yes.
8 Q. And what happens under those circumstances?
9 A. We look on the spindles. We have spindles that
10 have the -- they're round and they have the long prongs
11 on them. The cook code slides up over the prongs on the
12 spindle, so usually we look on one of those and we'll
13 find the cook code.
14 Q. And where is the spindle located?
15 A. Right to my left on a lower shelf.
16 Q. And what is -- if the cook code is not in the
17 container where you looked initially, how far do you
18 have to reach to pick up a cook code from the spindle?
19 A. Down to knee level.
20 Q. Down to knee level?
21 A. Yeah.
22 Q. So how far laterally is it from where you're
23 standing?
24 A. Oh, I'm right there. Right to the shelf. That's
25 where I work, at the window. I mean, I could just –
[page 22]
1 the window is here. I can just reach. The shelves are
2 on this side.
3 Q. Okay. And are the cook codes organized by name on
4 the spindle?
5 A. It tells the name of the cook code on the spindle.
6 Q. And how is it marked?
7 A. The cook code itself has the name.

Q. Okay.
A. It's the only way I can find them, yes.
Q. Do you ever have to search around for the right cook code?
A. We no longer do that. There was a time when we would run out because the workers would not return them, and they have ordered plenty of them now.
Q. Okay. But is it difficult to find the correct cook code on the spindle? Is it -- well, strike that. Is it more difficult to find the correct cook code on the spindle than it is to find the right cook code in the drawers?
A. Oh, no. No. And it saves time for them because it's already on the spindle, if we find it that way.
Q. Okay. And then do some employees require metal detector sticks?
A. Yes, they do.
Q. Which employees are those?

[page 30]

Q. So you said a few show up at 2:30?
A. They start, yes.
Q. They start coming in at 2:30?
A. Yes.
Q. And then what time -- what -- typically what times do the people that come in early come in? They start at 2:30 and then how -- how do they come in after that?
A. Oh, they just come a few at a time, very few at a time.
Q. What time does second shift begin?
A. 3:45.
Q. Do you have any idea why employees would show up at 2:30 for a shift that starts at 3:45?
A. They're the ones -- there's not many. They're the ones that leave their cars at home because there are too many cars right there with all the construction, and they come -- some get a ride from wherever they're coming from. I have no idea.

19 Q. So you're not -- do I understand you to say that
20 you're not sure why they show up so early?
21 A. I am not sure, no.
22 Q. And what time do the bulk of the employees show up
23 at the cage?
24 A. They start pretty good around two forty-five,
25 three. It really starts getting busy at three.
[page 31]
1 Q. What do you mean by it starts getting busy at
2 three?
3 A. Busier. More steady coming to the window.
4 Q. Can you explain a little bit more what you mean by
5 steady?
6 A. Well, they're coming to pick their things up. I
7 have to stand by the window.
8 Q. Okay.
9 A. You know, you don't go and sit down because
10 they're coming. If I went to sit down, then there would
11 be somebody else right there.
12 Q. Okay. And when it's -- when it's busier, how many
13 employees are waiting to collect their equipment from
14 the cage?
15 A. Oh, there could be eight or ten.
16 Q. And which way -- well, maybe you can show me on
17 Exhibit 4, which is the production floor --
18 MR. FLEMING: That's not Exhibit 4. It's
19 just Diagram 4. We didn't put them in as exhibits.
20 BYMR.DIXON:
21 Q. Diagram 4. Is the cage on the production level or
22 is it on the lower level?
23 A. Lower level.
24 MR. FLEMING: Diagram 3.
25 BY MR.DIXON:
[page 36]
1 that hallway?
2 A. Yes. Yes.
3 Q. Okay. And how far to the left can you see?

4 A. There's a door right to the left.
5 Q. There's a door right to the left?
6 A. Yes.
7 Q. And then there are elevators straight ahead. So
8 you said that was about six feet?
9 A. I think it's a six-foot hallway, but there's --
10 like it sets back another foot or so --
11 Q. Okay.
12 A. -- built in like from the wall.
13 Q. So how long is the busy period at the cage?
14 A. A half hour.
15 Q. A half hour. So is there typically a line of
16 seven or eight people during the whole busy period?
17 A. It builds up some.
18 Q. Can you explain that a little bit more?
19 A. There are several people out there getting their
20 coats, but it's hard for us to distinguish whether
21 they're leaving from first shift. They go the same
way.
22 If they're coming down from Line 2, the hall is full
of
23 first-shift people.
24 Q. Okay.
25 A. And they're passing these other people.
[page 37]
1 Q. Okay. But just in terms of people waiting to get
2 their equipment from the cage, how many people would
you
3 estimate are waiting to pick up their equipment at the
4 cage during the busy periods?
5 A. Maybe eight to ten people.
6 Q. Eight to ten people?
7 A. It seems that way to me, yes.
8 Q. And for what period of time is the line comprised
9 of eight to ten people?
10 A. They're there and they leave and another bunch
11 will come up after they get their white coat or whatever

12 they're getting out in the hall.
13 Q. I guess I'm having a little bit of difficulty
14 understanding. Is it consistently a line of eight to
15 ten people during the busy time?
16 A. No, no. Not always. Not always. It varies. It
17 varies.
18 Q. How does it vary?
19 A. I've seen it almost down to the elevator -- to the
20 lockers.
21 Q. Okay.
22 A. The line.
23 Q. And how far away is that from where you're
24 standing?
25 A. That is 16 feet from the window to the locker. I
[page 39]
1 at that time?
2 A. It varies. Some days it could be up to 10, 15, I
3 think, in the line. Some days. But they don't all come
4 at once.
5 Q. But you said you've seen the line extend back as
6 far as the lockers?
7 A. Yes, but not -- not always packed in. You know
8 what I'm saying? Not always that way.
9 Q. Okay. So could there have been more employees
10 than that?
11 A. We don't always get a chance to look around the
12 corner. We don't always have the time for that.
13 Q. I understand. I understand.
14 A. Just we're too busy passing the stuff out.
15 Q. Sure. But you said that you've seen the line
16 extend back to the lockers, so I'm just trying to get an
17 idea of how many employees are in the line when it
18 extends back to the lockers.
19 A. It would be hard for me to say how many.
20 Q. Okay. Well, you said that there are approximately
21 eight to ten employees --
22 A. Normally.

23 Q. Normally?
24 A. Yes. At one time. At one time.
25 Q. And what time frame are you talking about as
[page 40]
1 normally?
2 A. Well, when I've seen them, I have seen crowds in
3 the hallway. I have seen crowds out there, but at that
4 time of day--
5 Q. That's what I'm trying to get at. Which time?
6 A. It's very difficult to tell if they're leaving
7 from first shift or if they're all our crowd, you know,
8 on second.
9 Q. Which time of day are you talking about?
10 A. They start leaving at three.
11 Q. Whatdoyoumean-12
A. First shift.
13 Q. First shift starts leaving at three?
14 A. Yes.
15 Q. Now, I'm just trying to get at the line of people
16 there to either get equipment or drop off equipment.
17 A. Yes, I know, but they're all intermingled. That's
18 how -- that's the way they are. They just -- they're
19 sitting on the rail where the heater is. Some are
20 second-shift people. And the first shift is passing all
21 through them to get out, so it's --
22 Q. So if there are eight to ten people in line when
23 the line is -- in a typical busy time situation and then
24 you've estimated that there's at least 16 feet from the
25 window to the locker, when the line extends that far,
[page 41]
1 doesn't it stand to reason that there are approximately
2 twice as many employees in line?
3 A. Oh, at times, yes.
4 Q. Okay. How often does that happen?
5 A. Well, it's hard to say. The lockers are over that
6 way, and see, the people are at the lockers so I don't
7 know if they're always in line or at the lockers.

8 Q. Okay. And then during the busy times, do you have
9 a chance to look down the hall regularly?
10 A. Yes, just an easy glance out through.
11 Q. Just an easy glance?
12 A. Look in the mirror.
13 Q. When it's busy, are you working hard to make sure
14 people get their equipment?
15 A. When it's busy, yes.
16 Q. When it's busy. So you don't --
17 A. Definitely, yes.
18 Q. So you don't always have a chance to look down the
19 hallway?
20 A. That's right.
21 Q. So you might not always know how many people are
22 in the line?
23 A. That's right.
24 Q. So it could conceivably be more than what you've
25 estimated here today?
[page 42]
1 A. Yes.
2 Q. Does somebody else work with you in the cage?
3 A. Yes.
4 Q. What is that person's name?
5 A. Sharon Jenkins.
6 Q. And what does Sharon Jenkins do?
7 A. It's basically her job in there. I'm just her
8 helper.
9 Q. So what does -- what does Ms. Jenkins do that you
10 don't do?
11 A. The same things. The very same thing.
12 Q. So both you and Ms. Jenkins do the exact same
13 things?
14 A. Yes.
15 Q. And when does she work in the cage?
16 A. She works from -- she works until eleven, I
17 believe, eleven or eleven-thirty at night, so she starts
18 maybe at quarter of three, quarter of three.

19 Q. Okay. So you leave to go work on the line and she
20 remains behind in the cage?
21 A. Yes.
22 Q. Okay. I'm understanding. Do you ever get pulled
23 away from your duties in the cage during the times that
24 you are supposed to work there?
25 A. No.
[page 66]
1 think I have any enemies there. I hope not.
2 Q. So what other sorts of conversations do you have
3 with employees?
4 A. Well, certain ones like to pick you out and tell
5 you their problems and you talk with them, you know.
6 They talk about everything, I mean, just all their
7 personal things and things you wouldn't want to repeat
8 and--
9 Q. You should be a bartender.
10 A. Really.
11 Q. So do they talk with you during the busy times?
12 A. No, no, because it's going too fast. See, we're
13 just -- there's a period of time there from three to
14 three-thirty when we're just -- it's moving. It's
15 moving.
16 Q. Do employees ever complain about having to wait in
17 line for equipment?
18 A. There's always somebody complaining. You can hear
19 people every now and then.
20 Q. What sorts of complaints have you gotten?
21 A. Wanting to know why things don't go fast, yeah.
22 Q. Can you remember any specific conversations, any
23 specific complaints?
24 A. No. Just come on, let's get this moving,
25 something like that.
[page 67]
1 Q. Why do you think they would say that?
2 A. Because somebody in front -- a lot of times they
3 will say they want -- these are temporaries that do this

4 to us. They need a green hat for the temporaries. They
5 will say blue, yellow, they'll point out these things,
6 and you don't know if they've been hired or not, so we
7 give them what they ask for. That takes that little bit
8 of extra, you know. You've got to change the hat again
9 for them, things like that. They'll say a nine if they
10 want an eight. And the temporaries are the only ones
11 that we really can't keep track of what they need. The
12 regulars we know pretty much.
13 Q. So the temporaries, you don't know what they want
14 because you haven't seen them before?
15 A. We've seen them all before, but we don't know if
16 the company has hired them to wear a blue hat for
17 training. See, they'll ask for any color. They ask for
18 the wrong size gloves, things like that.
19 Q. And that takes a little bit longer?
20 A. It doesn't take much longer.
21 Q. Just to straighten that situation out?
22 A. I mean, just reach quick, put it back and grab
23 another.
24 Q. You said that the temporary employees get hats.
25 Are those given out of the cage also?
[page 77]
1 Q. How often does that happen?
2 A. Maybe daily with one or two. And usually those
3 are temporaries.
4 Q. And do the temporaries wait in the same line for
5 equipment as everybody else does?
6 A. Yes, they do. Yes.
7 Q. They do. What time did you say you left the cage
8 to go work on the line?
9 A. It's according to what time the girl comes back,
10 the regular one. It's usually around four-thirty.
11 Q. Which regular one?
12 A. Four or four-thirty.
13 Q. Which regular girl are you talking about?
14 A. Sharon.

Q. Sharon Jenkins?
A. Sharon Jenkins.
Q. So is she there during the time that you're working there?
A. Yes, she is.
Q. And you said -- well, do you leave the cage when she comes back?
A. I leave the cage or I sit right there and take my break. Sometimes I stay in there for 15 minutes, and other times I go out and move my car or something like that.

Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*	
	*	
Plaintiffs,	*	
	*	
V.	*	CIVIL NO. CV-00-371-P-C
	*	
BARBER FOODS,	*	
	*	
Defendant.	*	

DEPOSITION of ZEGKA RADOVIC, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 25, 2001, before Roxanne DiMarco, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
For the Defendant:	Graydon G. Stevens, Esq.
Translator:	Dusan Bjelic

[page 8]

1 A Yes, I was picking up everything myself.
2 Q And where--where were those items located for you to pick
3 up?
4 A Coats were in the hail next to--to the lockers. And the
5 gloves were usually in cafeteria. Later they switched
6 gloves in a--some small room which was not far from--from
7 the lockers.

8 Q And how about the hairnet and the earplugs?
9 A The gloves, the net, [illegible]ugs, and the hat were all in that
10 small room next to the locker.
11 Q And during this time when--when you worked at Barber
12 Foods, when you had to pick up your coat, did you--was
13 there usually a line where you'd have to wait for any
14 period of time to be able to get your coat off the rack?
15 A Yeah, there was, often was a line.
16 Q Can you give me some idea, your best estimate, as to
17 normally how--how long that line was, how many people
18 would be in it?
19 A Usually there were between five and six people ahead of me
20 and it would take me about two to three minutes to get my
21 stuff.
22 Q When--when you say get your stuff, does--is that the--the
23 white coat or is that the white coat and the other stuff,
24 the hairnet and the gloves and the earplugs?
25 A Only white coat.
[page 9]
1 Q And then once you got your white coat and went over to the
2 other room to get your hairnet, gloves, and earplugs, was
3 there usually a line over there, and if so, how many
4 people and how long did that usually take?
5 A About between five and six people and between two to three
6 minutes.
7 Q And after you picked up your stuff from that room, what
8 would you generally--where would you go and what would you
9 do at that point?
10 A Then I would go to check in and get into the--on the line.
11 Q So you would usually go from that room to whatever

time
12 clock you were going to swipe your card?
13 A I will walk to the--to the checker that is--that stands
14 for my line. I will check in and then just go to the
15 line.
16 Q And the time clock, did you--did you--did you rotate
17 amongst the lines, the production lines?
18 A I will switch lines.
19 Q And so did you use--did you swipe on different time
clocks
20 depending upon what line you were on that particular
day?
21 A Yes. If I would go to a different line, I would go to a
22 different check-in.
23 Q Now was there--was there normally a line waiting to-
24 whatever time clock you would--you would check in on
each
25 --on any particular day, was there normally a line waiting
[page 10]
1 at hat time clock, of people waiting to swipe in?
2 A Yes.
3 Q And once again, about normally, anyway, how many
people
4 would be in that line and how long would it take you from
5 the time you got to that line till you were able to
6 finally swipe your card?
7 A It varies. Sometimes you can have five, sometimes
seven,
8 sometimes fifteen, and usually it takes a couple of
9 minutes.
10 Q Now can you--from the time that you would usually
actually
11 arrive at the--I'm going to start over. Which entrance
12 did you usually come in? Did you--did you usually come
in
13 the entrance by the cafeteria?
14 A Yes, I will come to that entrance next to cafeteria, but I

15 had always to go into the cafeteria to leave a lunch
16 before I then go to get ready.
17 Q And then once you--once you had picked up everything you
18 needed to pick up to go upstairs, which stairway did you
19 normally use or--or did it make any difference, or would
20 you use a different one, just sort of random?
21 MR. STEVENS: Do you understand? There's two major
22 stairways. I'm just trying to find out which one she normally
23 used or whether it didn't make any difference.
24 A Depending on which line I'm going. That is to say I will
25 take the stairs which are closer to the line.
[page 11]
1 Q Okay. From the time--can you estimate, as best you can,
2 from the time you would actually enter the plant, at the
3 entrance that you usually came in, until you swiped your
4 card to punch in in the morning, can you give us your best
5 estimate of normally how long it took you, from the time
6 you came into the entrance till the time you swiped your
7 card?
8 A Up to fifteen minutes.
9 Q And out of that time, I'm going to ask you, if you can,
10 the best way, can you estimate for me out of that normal
11 fifteen minutes, to break that down, how much of that time
12 would you say you spent walking, number one; two, waiting
13 in line to either pick some--to either pick up your
14 clothes or swipe in; and three, actually putting on your
15 hairnet and your coat and your gloves and your earplugs?
16 MR. STEVENS: Do you understand? Out of those--
17 THE TRANSLATOR: Three, right? Walking, waiting,--
18 MR. STEVENS: Walking, waiting, and--
19 THE TRANSLATOR: --and--and putting clothes---
20 MR. STEVENS: --and putting clothes on.

21 Q I--I know this is tough and it's--and--and it's impossible
22 to get it exac', but if you feel able to give me your best
23 estimate, can you break it down amongst those activities?
24 A There was--so there was never the same time, depending how
25 many people stand ahead of me. Approximately five minutes
[page 12]
1 for each sequence.
2 Q At the end of the shift, did you ever--during the time
3 that you were working at Barber Foods anyway, at the end
4 of the shift were the--did you take any of these items off
5 before you punched out? What I'm referring to is the
6 earplugs, the gloves, the hairnet, and the coat. At the
7 end of the shift, did you take any of them off before you
8 punched out?
9 A No.
10 Q Now from--can you estimate for me, from the time you
11 swiped your thing--you swiped your card to punch out until
12 you actually left the plant, you know, go out the exit and
13 leave the plant, how much time do you think that took you?
14 A About ten to twelve minutes.
15 Q Am I correct that you could usually--it usually took you
16 less time to swipe and leave the plant than it took you to
17 enter the plant and swipe in?
18 MR. STEVENS: Do you understand what I'm saying?
19 THE TRANSLATOR: Yes.
20 A I think it is.
21 Q To what do you attribute that?
22 A I think because usually there's no line.
23 Q Now I know that some of these next questions may sound
24 very silly, but I'm going to ask them anyway. Okay? How
25 long have--if you can give me an estimate, how long, do

[page 13]
1 you think, did it--did it normally take you to take off
2 your earplugs?
3 THE TRANSLATOR: What?
4 Q How long did it normally take you to take off--to remove
5 your earplugs?
6 A About two seconds.
7 Q And how long do you think it usually took you--and I
8 under--I told you they were going to sound silly but I was
9 going to ask them anyway. How long do you think it
10 usually took you to remove your hairnet?
11 A Two, three seconds.
12 Q Did you--did you usually wear both the white cotton
gloves
13 and the blue rubber gloves?
14 A Yes.
15 Q Okay. How long, would you estimate the best you can,
it
16 actually took you to remove the--both sets of gloves?
17 A It took me several seconds to take it off, but then it
18 took a time to sort them out.
19 Q Explain to me when you say "sort them out" because
I'm
20 not--I'm not sure I understand what you mean by that.
21 A Blue gloves you throw into garbage, and the white one
you
22 will have to put in a place which they will be taken to be
23 washed.
24 Q Okay. So actually removing the gloves would once
again
25 just take a--a few seconds. Right?
[page 14]
1 A Several seconds.
2 Q But then it would take a little more time to find, since
3 one was put into a laundry bin and one into a trash bin,
4 it would take a little more time to make sure you got the
5 right bin. Right?

6 A Yes, it takes a time, and perhaps a minute.
7 Q And how long do you think it--estimate it--it actually
8 takes you--took you to take your--your white coat off, the
9 lab coat?
10 A A minute. Because there are buttons and it takes time.
11 Q Now after you--after you swiped out and you leave the
12 production floor, did you start taking those items off?
13 In other words your hairnet, your gloves, your earplugs
14 and your coat?
15 A When I get in the hail, then I will start just taking
16 earplugs, then walk to the place where I take gloves.
17 Q Where is the hole?
18 MR. STEVENS: Oh, I'm sorry. I--that might have
19 been--are you saying "hall"?
20 THE TRANSLATOR: Hall. Yeah.
21 MR. STEVENS: I'm sorry. I'm sorry.
22 THE TRANSLATOR: Hall.
23 MR. STEVENS: Yeah.
24 Q So where were the--where were the trash bins and
laundry
25 bins located where you would dispose of your hairnet,
[page 15]
1 gloves, earplugs, arid coat?
2 A They will be in the--in the various locations in the
3 halls.
4 Q Now when--when you were removing--and--and I want
to make
5 sure I get it correct. Most days what you wore to the
6 production floor would be a coat, the--I mean the white
7 coat, the hairnet, both sets of gloves, and the earplugs.
8 After you swipe out, when you're removing those, did you
9 generally start taking those off while you're walking down
10 the stairways and down the hail towards the--the bins?
11 A I will usually start doing that.
12 Q And so usually by the time you got to the trash bin
where
13 you can throw, for example, either the rubber--rubber

14 gloves and the hairnet and the earplugs away, they were
15 already off. Is that right?
16 A Depending. I--sometimes I have one set of gloves taken
17 off before I come there and then I stand and take the
18 other gloves off and then I dispose of them. But usually
19 I have my earplugs taken out before I come there.
20 Q Usually you would have at least your earplugs and your
21 hairnet taken off before you got to the first trash bin,
22 is that right?
23 A It depends. You know, sometimes I will come with
gloves
24 taken off and I will--I will take my net after I take the
25 gloves off, and sometimes I will take the gloves off only
[page 16]
1 when I come to this--places where to dispose and then take
2 the net. So it depends on the walking and--and my body
3 movement.
4 Q And what you would--Am I correct that--that what you
left
5 in your locker every day was the--was the warm jacket that
6 you would wear for warmth?
7 A Yes, I——I always check there.
8 Q So and--and—if you can, can you tell me if—if you
9 didn't—I think you previously told me that it usually
10 took you about ten to twelve minutes from the time you
11 swiped out at the end of your shift until you left the--
12 actually exited the plant. If you didn't have to go to
13 your locker, okay? If you didn't have to go leave
14 anything in your locker, if you were just swiping out and
15 taking your hairnet, gloves, and earplugs off and throwing
16 your coat--and throwing your white coat in the laundry
and
17 then getting out of the plant, how long do you think it
18 would take you to do that?
19 A bout five, six minutes. That--that includes a waiting
20 time.
21 Q Waiting time on the way out?

22 A Yeah.
23 Q Can--can you—go ahead.
24 A Usually the place where we take white coats off, there's
a
25 line, and there's a place where you hand them off.

Exhibit 9

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al,	*
	*
Plaintiffs,	*
	*
V.	*
	*
BARBER FOODS,	*
	*
Defendant.	*

DEPOSITION of TADEUSZ OLSZYNSKI, was held at the law offices of Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, on October 23, 2001, before Carla Culver, a Notary Public in and for the State of Maine.

APPEARANCES:

For the Plaintiffs:	Charles Dixon, Esq.
	Lori B. Kisch, Esq.
For the Defendant:	Graydon G. Stevens, Esq.

[page 5]

1 A I forgot to -- also blue belt, I mean a black belt, back
2 support. I have to use it.
3 Q You wear the coat every day?
4 A Yeah, you have to --
5 Q That's required?
6 A -- required now in the production floor, coat.
7 Q And you wear a hairnet every day, and that's required?
8 A Yes, correct.
9 Q Do you wear both the rubber gloves and the cotton glove--
10 cotton liners?

11 A Well it depends, depends what I'm doing. If I -- let's
12 say I'm operator and I don't have to like help, for
13 example help workers on the machine. But if I decide to
14 help, I have to put rubber gloves cause I can touch the
15 chicken with two gloves on, with hands we're not
supposed
16 to do it, so we have to put rubber gloves and also
17 sleeves, plastic sleeves.
18 So I take it if you're just working the machine, do you
19 typically not wear gloves?
20 A Usually I have palletizing gloves, no rubber gloves,
21 cotton gloves.
22 And then if you have --
23 A Cause I have to, like I say, I have a ring, diamonds, I
24 have to -- (Indiscernible) not stones uncovered.
25 And then if you, for example, leave your machine to go
[page 9]
1 palletizing gloves.
2 Q And do you pick those up and take them back to the cage
3 every day, those palletizing gloves?
4 A No, I don't have to return to cage, I just put them
5 through the dirty clothes. We have bags for dirty gloves
6 and bins for dirty clothes. They like -- the washroom,
7 and they're used again.
8 Q But I guess what I'm trying to get at is where you
usually
9 get your palletizing gloves each day when you come to
10 work?
11 A From the cage.
12 Q You get a new pair every day?
13 A Yeah.
14 Q Now your steel-toed boots, where do you get those
from?
15 A I keep them in my locker, my locker.
16 And your earplugs?
17 A Earplugs, I get that from the cage.
18 Do you get those every day?

19 A Yes.
20 And how about your safety glasses; where do you get those?
21 A I have a safety gl-- I keep in my locker.
22 And your bump hat?
23 A Keep in locker.
24 And your back belt?
25 A Keep in locker.
[page 10]
1 Q Now have you had a locker for the last three -- since
2 December 1997?
3 A Yes, I had locker.
4 Q And what do you generally keep in your locker?
5 A Hat, boots, belt, black belt, and my tools.
6 Q And what tools do you keep in your locker?
7 A Like adjustable wrench, Allen wrenches, lock-out and tag-
8 out devices, which I require carry all the time on
9 production floor, scissors, --
10 Q I'm sorry?
11 A Scissors, pair of scissors.
12 Q How do you usually get to work in the morning? Or in the
13 afternoon, I'm sorry, you're second shift.
14 A Can you repeat it?
15 How do you usually get to work in the afternoon?
16 A With a car.
17 You drive a car?
18 A Yeah.
19 And where do you usually park?
20 A In the parking next to the cafeteria somewhere. I usually.
21 park -- I park where I find space quickly.
22 When do you typically arrive at work?
23 A I typically like 3:15.
24 And what entrance do you usually use when you come into

25 the plant?
[page 17]
1 A Yeah, um—hmm.
2 Q Now I take it when you come up, you generally come up the
3 spiral I staircase; is that right?
4 A Yes, yes.
5 Q And when you get on the production floor, I mean when you
6 come through the door, what do you typically do?
7 A We're coming through the door, I have to dip my hands in
8 the dip station.
9 Q That's the normal rou-- now there's dip stations at this
10 door, right?
11 A Yes.
12 Q How many are there?
13 A How many? I just see one over there, and the other one is
14 on the production floor, but you have to dip after you're
15 entering, and they check sometimes.
16 Q And then what do you do next?
17 A Then I go to the pack-out 1, which is here, and I punch
18 in.
19 So you punch in -- you generally punch in over here at
20 pack-out 1?
21 A Yes, pack-out 1.
22 Now you generally come in around 3:15 in the afternoon,
23 right?
24 A Yes.
25 How long does it usually take you to get your coat off the
[page 18]
1 rack?
2 A A few minutes. Depends if we have a coat, depends how
3 many people stand. I -- a few minutes, two or three
4 minutes. Sometimes less, sometimes longer. I estimate
5 two or three minutes.

6 Q So it actually takes you two or three minutes to grab your
7 coat off a rack, to actually find a coat and grab it off a
8 rack?
9 A Yeah.
10 Q How long is the line usually there when you come in at
11 3:15?
12 A Ten people.
13 Q There's actually ten -- there's a line, you actually have
14 to wait for one person at a time to grab their coats off
15 the rack?
16 A Yeah, I have to wait.
17 Is that typical that you have to wait to actually grab
18 your coat off the rack?
19 A Yeah, usually a few people there.
20 I'm sorry, I didn't understand that.
21 A Usually some people stand there and pick out a coat.
You
22 have to wait, like two person, stand next to the rack and
23 they finding their coats, so I have to wait. Some people
24 look annoyed and they go over your shoulder and grab the
25 coats and push you and -- but I wait.
[page 19]
1 Q Almost every day?
2 A Yeah.
3 Q Once you grab your coat, how long does it actually --
how
4 long does it normally take you to get whatever you get out
5 of the cage--your earplugs and whatever else you get out
6 of the cage?
7 A Usually there's a line to the cage, so I have to stand
8 another few minutes in line to get my stuff, to get
9 earplugs and hairnet and gloves.
10 Q How long is the typical line at the cage time wise, that
11 you actually have to wait in line?
12 A Depends. Sometimes it's few people, sometimes twenty
13 people, sometimes no people.
14 Q Give me -- is there a typical wait or does it always

vary?
A Typical wait, there's always few people, like ten people standing in line.
So typically -- your best estimate is that it's typically approximately ten people waiting at the cage to get their stuff, right?
A Yes.
And is there a typical time that it takes them to get it so from when you get there, like the tenth or eleventh person, to actually get up at the window, is there a typical length of time that that takes?
A A few minutes.
[page 20]
Q When you say a few minutes, I mean two, five, six, seven,
is there -- can you give me your best estimate?
A I never figure out how long. I never stop with a watch and look. We can do it later. I'd say it take me fifteen to twenty minutes to get ready, to get on production floor since I arrive.
Q But I'm trying to break this down and --
A Yeah, but like I said, I never stand with a watch and check how many minutes.
Q Well let me ask you this: When you actually -- when you
move up the line and arrive at the window, okay, and basically hold your hand out and get your earplugs and your hairnet -- and what else do you get out of the cage typically on a typical day?
A Gloves.
Q Okay, your earplugs, your hairnet and your gloves. From the moment that you actually -- your face arrives there at
the cage and either Helen or Sharon or whoever is in there hands that to you, how long does that take?
A Since I stay in the cage?
Yeah, from the time that you move up the line so that

you're next in line; in other words, you actually are
right there at the window, --
A Five minutes, five minutes.
No, no, I'm not asking you how long it takes you to stand
[page 21]
in line. What I'm asking you is --
A How long it take to pass me this --
Q That's right. For example -- let me do it this way cause
this might be easier. If there was no line at all and you
just walked right up to the cage, put your hand out, how
long does it take you, do you think, for them to give you
the stuff that you need out of the cage?
A Less than one minute.
Well I mean it would literally take like five seconds,
wouldn't it?
A Well, if I -- I always ask for palletizing gloves, and
palletizing gloves, the person's supposed to go back, say
10 feet back, wherever they are, and bring you them.
Other stuff like hairnet and gloves, she just pick from
the bins and put like that. For gloves you got to go
back, so it's not like you can do it in five seconds.
Do you think it takes a minute for her to go --
A Less than one minute.
Q So am I correct that the worst-case scenario, if there's
no line, the longest it takes you to get your materials
from the cage, from the time you arrive at the window
until they're actually in your hand, is a minute?
A Yeah, no people.
And if it wasn't for the gloves, I mean people -- the
typical line associate, do you generally stand in line
[page 25]
A Well I never measure. We can do it later, if you want.
Q Well I know, but what I'm wondering is if you have an
estimate of the amount of time it actually takes you once
you open your locker to just grab your back belt and put
it on and buckle it?
A Well, let's say three minutes.

7 Q You think it takes you three minutes typically to actually
8 put your belt on?
9 A Yeah, I'd say three minutes.
10 Q What do you put on next?
11 A Then I put my boots on.
12 Q How long does it take you to put your boots on?
13 A Another three minutes. I got to take off my sneakers, got
14 to sit down, and then I put my boots, then I put my vest.
15 Q Okay, wait a second. So your boots you put on --
16 generally put on next, and you say that generally takes
17 you about three minutes, right?
18 A (Nods head affirmatively.)
19 And what do you put on next?
20 A My vest.
21 And where do you get the vest?
22 A It's my private vest.
23 That's your private vest that you - -
24 A Yes, because I cold on floor. Everyone on this floor has
25 some.
[page 26]
1 Q Is it a button-up vest or a zip-up vest?
2 A A zipper vest.
3 Q And how long does it take you to put the vest on?
4 A One minute.
5 Q Does that have sleeves on it or is it sleeveless?
6 A No, sleeveless.
7 Q What do you do next?
8 A Then I put my coat on.
9 Q How long does it take you to put your coat on?
10 A Another minute.
11 Q How many buttons does it have on it?
12 A Five or six.
13 Q What do you do next?
14 A Then I put hairnet.
15 Q How long does it take to put your hairnet on?
16 A Ten seconds.

17 What do you do next?
18 A Then I put my hat, plastic hat.
19 - How long does it take you to put that on?
20 A Say another twenty seconds.
21 It takes you twenty seconds to put a hat on typically?
22 A Yeah.
23 And what do you put on next?
24 A Then I grab up my tools, put my tools to the pockets.
25 What tools do you generally grab?
[page 27]
1 A Adjustable wrench, Allen wrenches, scissors, also pen, and
2 lockout, tag-out stuff.
3 Q And where do you keep those during the day?
4 A In the pockets.
5 Q The outside pockets of the coat?
6 A Yeah, in my coat.
7 Q How long does it •take you to grab your tools and put them
8 into your coat pocket?
9 A Say one minute.
10 Q After you do that, what do you do?
11 A Then go to production floor.
12 Q When do you hang your earplugs around your neck?
13 A Yeah, before entering production floor I have to put my
14 plug-- earplugs in.
15 How long does it - - I'm sorry, go ahead. How long does it
16 take you to put your earplugs on, actually get them
17 around, you know, and get them around your neck and put
18 them on?
19 A I have to first prepare them - - I have to squeeze them - - I'd
20 say one minute.
21 Do you use new earplugs every day?
22 A Yeah.
23 And how long does it take you to get your safety glasses

24 out of your locker and put them around your neck?
25 A Twenty seconds.
[page 29]
1 A Yeah, we have breaks.
2 Q No, I'm talking about -- I'm not talking about breaks.
3 I'm talking about the beginning of the shift, from the
4 time you walk in to come to work until you get up on the.
5 production floor and punch in, do you follow this routine
6 all the time or are there occasions where you go to the
7 cafeteria and have a cup of coffee or --
8 A Yeah, I forgot to tell about the first thing I enter the
9 company, I go to cafeteria to put my lunch bag into the
10 frig. That's the first thing I do.
11 Q And after you've -- I guess what I'm asking though is --
12 A Yeah, after that I go to get my coat.
13 Q And after you get your coat and then go to the cage and
go
14 to your locker, --
15 A Yeah.
16 -- are there occasions where instead of proceeding
17 upstairs to dip and punch in, you go to the cafeteria or
18 somewhere else just to socialize or have something to eat
19 or something to drink?
20 A No, I don't have a time for that. No time like a half
21 hour before the shift and sitting for nothing in the
22 cafeteria.
23 Let me ask you, how long do you think it takes you to --
24 how long does it take you to walk from the time you enter
25 the plant, the plant entrance that you typically use,
[page 30]
1 until you get to the coat rack?
2 A One minute.
3 Q How long does it typically take you to walk from the
cage,
4 once you've picked up your materials at the cage, to your
5 locker?
6 A Usually I guess two minutes. Depends how much people

on
7 the hall. Sometimes we have so many people you have to
8 sneak between people. Sometimes -- but usually I would
9 say two minutes to get to locker.
10 Q And once you've actually got your stuff on, everything
11 that you're going to put on so that you're ready to leave
12 the locker room and go upstairs, how long does it actually
13 take you to walk upstairs and to the dipping
14 station?
15 A That also depends how many people on the stairs, but I
16 would say two minutes. Usually people upstairs, before
17 people entering the door, people put your glasses on and
18 it's like they block the door for people who don't have to
19 put glasses on. So sometimes you have to wait or just
20 sneak between people. I would say two minutes.
21 From the time you actually leave the locker room until
you
22 actually are able to dip your hands in that dipping
23 station?
24 A Yes.
25 And is that because there is typically a wait at the
[page 41]
1 A Nothing.
2 Q Let's not talk about after or before punch out. What do
3 you have to take back to the cage on any typical day?
4 A The stuff I signed for the machines.
5 Q And when do you usually take that back?
6 A Before I punch out.
7 Q At the end of the shift --
8 A Yes.
9 Q -- before you punch out, you take your codes and your
10 metal --
11 A No, no, no, you mean my codes?
12 Q Yeah, the stuff that you got out of the cage.
13 MS. KISCH: Codes, codes, not coats.
14 Q Codes.
15 A Cook codes?

16 Q That's right, yeah, cook codes.
17 A Okay.
18 So that type of -- anything that you got out of the cage
19 and had to return to the cage, I take it you returned to
20 the cage before you --
21 A After production done.
22 After production is done, but before you punch out for the
23 day?
24 A Yes.
25 And then you come back up and punch out?
[page 42]
1 A Yes, after that, yeah, punch out.
2 Q And in your locker room, I take it you've generally
3 already thrown away your earplugs and your hairnet, right?
4. A Yes.
5 Q And you generally have taken your coat and your gloves
off
6 and thrown them in the laundry bin, right?
7 A Yes.
8 Q So then what do you need to take off, what else do you
9 need to take off in the locker room and actually store in
10 your locker before you can get out of there and go home?
11 A My hat, plastic hat, my vest, my black belt, and my
tools,
12 and lockout tag things, my boots.
13 Q Just if you can, try to separate the amount of time it
14 actually takes to take that stuff off and store it in your
15 locker, how long do you think that takes you? I'm not
16 talking about walking time from pack-out 1 all the way
17 down to the locker room, and walking time from the
locker
18 room out of the plant. I'm talking about you've already
19 gotten rid of your hairnet and earplugs on a normal day,
20 you've already gotten rid of your coat and your gloves
21 while you're walking from the floor down to the locker
22 room on a normal day. Now you're left with whatever you
23 have to store in your locker. How long does it actually

24 take you to take the rest of that stuff off and store it
25 in the locker?
[page 43]
1 A At least five minutes.
2 Q And then how long does it generally take you to go from
3 the locker and actually walk out of the plant, before you
4 actually leave the door?
5 A From the locker? I go first to cafeteria to get my stuff
6 from frig, then I go out. Two minutes.
7 Q Now you said something earlier, and I won't get it exact,
8 about your supervisor telling you to prepare codes or
9 something for the next day so it wouldn't take you so
10 long?
11 A Yeah.
12 Q Do you understand what I'm talking about?
13 A Yeah, we complain many times in the past about long
lines,
14 and we sometimes wouldn't like the work because of long
15 lines. It was long time ago.
16 Q When you say a long time ago, more than three years
ago?
17 A More. And long lines to get the stuff, like the coats,
18 gloves, and we were late, and sometimes production start
19 late. Because of that we complained to supervisor, and he
20 said the best way to avoid this is to prepare after the
21 work, after job done after your shift, take the time,
22 prepare your coats, your gloves, your hairnet. Put to
23 your locker and you don't have any problem.
24 And who said this?
25 A It was at the time Alan Gilman and Tyrone Ives.
[page 47]
1 you have not had your thirty-minute lunch break?
2 A I don't recall like a short breaks or short lunchtime.
3 Q Now what do you, you yourself, what do you generally
do
4 during your lunch break?
5 A On the lunch break?

6 Q Yeah. Just typical.
7 A Lunch break I go to cafeteria usually and eat my lunch and
8 go to bathroom. Usually after lunch go outside, smoke, or
9 just go outside to take breath.
10 Q I take it you're allowed to -- you could do whatever you
11 want to do --
12 A Yes, --
13 Q -- on your lunch break?
14 A -- you can go home, you can go see a friend.
15 Q As long as you take your coat off before you leave the
16 plant, you can do anything you want?
17 A Correct.
18 Now there are some--and I'll never be able to get exactly
19 what it said in the Complaint--but there were some
20 allegations in the Complaint that was filed in this case
21 that people were required to visit the medical office
22 during their lunch break, during their unpaid lunch break.
23 Did that ever happen to you?
24 A I never remember if I was sent on lunch break, but I
25 remember I was sent to the doctor before work, like on
[page 48]
1 next day, cause there's a doctor or something once or
2 twice a week. So a nurse asked me to come over the next
3 day at 3 o'clock before work's time.
4 Q How many times did that happen?
5 A I think once, I guess.
6 Q And do you recall when that was?
7 A I guess it was in 1997, 1998.
8 Q Either in 1997 or 1998?
9 A Yeah, I recall like three times I was in the nurse office
10 or hospital in '97, '98, '99. I was few times, but I --
11 Q What I'm trying to figure out is can you give me your best
12 estimate of how many times you actually visited, were told
13 to visit the medical office either during your unpaid

14 lunch break or before or after your shift?
15 A Okay, once I visit before my shift, and twice I was sent
16 to the hospital, Brighton, or Mercy, Mercy, no, no Mercy.
17 Q Mercy?
18 A No, on Brighton Avenue.
19 Q Oh, on Brighton Avenue, okay, Brighton Medical Center.
20 A Brighton Medical Center, yeah. I was sent there and I
21 spent like three or four hours there waiting for doctor
22 and for treatment, then took x-rays. So I spent few hours
23 over there and I didn't have lunch.
24 Q Were there any other times?
25 A I don't know, I don't recall.
[page 49]
1 Q Now the time before the shift, what type of injury, was
2 that a work-related injury?
3 A Yeah, it was a back pain.
4 Q I'm sorry, what?
5 A Lower back pain.
6 Q And do you recall -- can you give me your best estimate of
7 when that was?
8 A '97.
9 Q December of 1997 or before December 1997?
10 A I don't recall. They must have keep a record on.
11 Q Do you remember when the next visit was?
12 A No, I don't recall but I have like a restriction card and
13 I have it somewhere in my locker.
14 Q And how long did you visit the nurse on that occasion?
15 A For how long? It was half-hour.
16 Do you know whether you got paid for that?
17 A No, it was before work so I didn't punch in yet.
18 And how did that appointment come to be?
19 A Pardon me?
20 Do you know how it was that that appointment was made for
21 that particular time?

22 A Well the last, last day before when I went to the nurse
23 with back pain and I -- and she said come over to me at 3
24 o'clock and doctor gonna' be here, and she check, she
make
25 appointment.

Exhibit 10

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	) CV-00-371-P-C
vs.	)
	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30 (B) (6) DEPOSITION of BARBER FOODS, INC. (Peter H. Bickford) and PETER H. BICKFORD, individually, taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 14, 2001, commencing at 1:45 P.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine.

[Page 44]

1 memorialized in Exhibit 10 in terms of the transcript, no
2 member of the Barber family has ever addressed the entire
3 employee complement at one time other than in those-with
4 respect to the twice annual company meetings?
5 A. I don't recall any other particular instances, but --
6 Q. Okay. All right.
7 MR. STEVENS: If you're going to switch gears,
8 can we take a bathroom break?
9 (A SHORT BREAK WAS TAKEN.)
10 Q. All right. In the exhibits that we have already
11 marked, Exhibits 3 and 4, Mr. Bickford, the employee
12 handbook and the associate handbook, can you describe the
13 relationship, if any, between those two documents?

A. Yes, Exhibit 4 is a 1996 update of the 1993 version, Exhibit 3.
Q. Okay. At some point in that time frame, you started calling employees associates?
A. Yeah, it may have been as early as '93, but we didn't get it on the handbook cover.
Q. Okay. One portion which is changed from Exhibit 3 to Exhibit 4 is -- well, first of all, in regard to salary, the overtime computation has some different types of figures that might be updated and more realistic. Is that the reason why you got those figures different?
A. What page?

Exhibit 11

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)
Plaintiffs,	) Docket No.
	) CV-00-371-P--C
vs.	)
BARBER FOODS, INC.,	)
d/b/a BARBER FOODS,	)
Defendant.	)

30(b) (6) DEPOSITION of BARBER FOODS, INC. (Thomas A. Page), taken pursuant to notice dated July 12, 2001, at the Law Offices of William C. Nugent, 75 Pearl Street, Portland, Maine, on August 13, 2001, commencing at 10:15 A.M., before Lisa M. Stiles, Registered Professional Reporter, a Notary Public in and for the State of Maine

[page 11]

1 Q. And how is that translated into their -- computation
2 of their paycheck?
3 A. They punch in initially, then they punch
several other
4 times during the day that have no influence on their pay,
5 they just allow us to analyze where we are utilizing the
6 labor. The two most important punches are the in- punch,
7 which is the first, and the out-punch, which is the last.
8 Q. All right. What kind of-- can you describe the punch
9 card system, does the card -- does it register on the card,
10 is there a time printed on the card or does it go
11 automatically in a computer system or how does it work?
12 A. There are time clocks in most every area and you take
13 your time card -- it's very much like a credit card - - and
14 you just slide it through the machine and it will register
15 your punch. Just swipe it.
16 Q. It's a swipe card?

17 A. Yes.
18 Q. So the time of the swipe, is it registered on the card
19 or is it registered in the machine?
20 A. In the computer.
21 Q. In the computer?
22 A. Yes.
23 Q. And to whom does that information go, I mean who
24 downloads that information?
25 A. I assume the accounting department.
[page 12]
1 Q. Okay. All right. And what's the nature -- can you
2 describe the appearance of the device into which the card
3 is swiped?
4 A. It's a box, I would say --just guessing -- 18 inches
5 long, 8 or 10 inches high, and it has a slot in it and you
6 just swipe your card.
7 Q. Uh-huh. The card itself, does it -- basically it only
8 contains the identity of the employee who swipes it?
9 A. Yes.
10 Q. It's telling the computer that this employee swiped
11 his card and the computer knows what time it is?
12 A. Yes.
13 Q. Okay. All right. Is there any -- and literally, the
14 time that the person swipes the card on the punch in, is
15 that the time they start getting paid?
16 A. Yes.
17 Q. And when they -- how do they -- you mentioned the
most
18 important ones are the punch-in and the punch- out?
19 MR. STEVENS: You have to answer
verbally, if
20 you're going to answer.
21 A. Yes.
22 Q. Then the -- and then there are some other swipes in
23 the middle of the day which are not as important, right?
24 A. Yes, they're just simply for us to analyze where the
25 labor is being used.

[page 17]
1 A. Unless I'm misreading the blueprint, for example, the
2 54 office area which has conference room, typically, the
3 associates will go to these clocks when they -- when they
4 come in. For example, there are three lines. There's a
5 clock at each end of each line. You have a specialty end
6 of the line which forms the product, it goes to the
7 freezer, and then you have a pack-out area, and
they both
8 have clocks.
9 Q. Okay.
10 A. There were some office areas not included.
They also
11 have clocks. I'm not sure where the PD clocks are, clocks
12 in other departments, clocks in the maintenance
department,
13 for example. I'm primarily concerned with the -- where
my
14 associates would be punching in.
15 Q. Okay. Now the witness has made a number
of time clock
16 markings on chart -- diagram number 4. Is diagram
number
17 4, is this the production floor?
18 A. Yes, these are production areas. And I may have
19 omitted a clock or two, but these are the typical clocks
20 that I'm familiar with.
21 Q. You didn't make any markings on number 3?
22 A. I have not yet, but I'm going to.
23 Q. Okay. We will leave that there. If you remember any
24 others, go ahead and make them.
25 A. If I had a list of the time clocks, I could -- they're
[page 21]
1 they're going to be wearing or at least carrying the
2 glasses and the ear plugs?
3 A. That's a personal choice. Some people would have
4 their hair nets on, some people wouldn't. Some people

might hold their coat. Again, we are more concerned with when they reach the production floor.
Q. Let's talk about that as well. On diagram four, all of the time clocks that you have notated on the diagram with the designation TIC with a circle around it, each of those -- I think we did that off the record, so I should make it clear -- each of those is a time clock?
A. Yes, you can see that in some cases, there's a number that may suggest that there is more than one clock. And again, I'm sure I omitted a few. As you can see, there is quite a few of them.
Q. These are all on the interior of the production floor itself; is that right?
A. Yes.
Q. And how do the employees get to the production floor, are there certain entrances that they have to come through?
A. There are two stairways leading to the production areas. One would be on the easterly side and one on the westerly side.
Q. Okay. Can you point those out to us?
A. For example, this one right here would be the western
[page 39]
A. It's the area after the freezer, the area after the freezing where the product comes out and it's frozen and it's packed.
Q. Are there employees that work in the freezer area?
A. Not in the spiral freezers because they're very, very cold. We have shipping associates that work in a central freezer.
Q. Okay. Do they wear sleeves?
A. I don't believe they do.
Q. Okay. Now the last item, back belt, and it says in parentheses, if a lugger. What's a back belt?
A. A lugger is somebody that's been certified to lift up to40pounds.
Q. Okay. And those persons must wear a back belt?

A. If they are in a job which requires lifting, yes.
Q. Okay. First of all, what's a back belt?
A. A back belt is an elastic -- it's fabric and elastic which, when attached, goes around your midsection to help remind you to keep your back straight when you are lifting.
Q. Okay.
A. It's more of a reminder.
Q. How does it remind you, because they can feel it?
A. Yes, if you try to bend, it will offer resistance.
Q. Okay.
A. And again, we encourage the associates to lift in an

[page 40]

ergonomically responsible way.
Q. All right. Now if a person -- if a person is a lugger -- strike that.
If a person is working in a job which requires them to use the back belt because they're going to have to -- they may lift up to 40 pounds, they would be working in a job in which their job description would indicate that that is a task, right?
A. Can you rephrase that?
Q. Yeah, that was a little bit awkward. I will just represent to you we got from Barber Foods in our document -- response to our document request, we got several inches of job descriptions for all kinds of different jobs at -- for all the jobs, I guess, at Barber Foods. If a person is working in a job which requires them to lift up to 40 pounds such that they would have to wear a back belt, that requirement would be listed in the job description?
A. I'mnot-20
Q. Or do you know?
A. I have not looked at the job descriptions. I'm not sure.

23 Q. Well, typically, who has to -- what jobs require that
24 kind of lifting requirement?
25 A. In the--
[page 79]
1 Q. Okay. Does anybody have to ever wear the steel mesh
2 gloves?
3 A. Yes, yes, that was an oversight on my part,
4 absolutely. Not very many jobs, but some do.
5 Q. Who wears the steel mesh gloves?
6 A. The mesh gloves would be worn by an associate that
7 would be using a knife to open up, say, boxes of cheese or
8 ham.
9 Q. Okay. Are those line workers?
10 A. They would be line workers.
11 Q. Okay. They're in special work stations, their
12 particular work stations, in other words, not all line
13 workers do it?
14 A. No, very few line associates would be using knives,
15 very, very few.
16 Q. For those who do, where do they get their steel mesh
17 gloves?
18 A. The mesh gloves would typically be supplied for them.
19 I believe the housekeepers on the line would supply those
20 as well as the knives.
21 Q. Okay. In other words, they obtain them after they're
22 at the work station?
23 A. Typically, they would be given these at the station.
24 We wouldn't have the associates, typically, go down to
the area.
25 cage and get them. They should already be in the
[page 104]
1 chickens?
2 A. Are you asking whether or not they begin working
3 producing product right at 3:45?
4 Q. What I'm asking is: At 3:45, where is a production
5 worker supposed to be at 3:45?
6 A. 3:45, they're typically in their area or close to that

7 area.
8 MR. FLEMING: I'm going to put in two exhibits.
9 (EXHIBIT NO. 3 EMPLOYEE HANDBOOK, MARKED BY THE
10 REPORTER.)
11 (EXHIBIT NO.4 ASSOCIATE HANDBOOK, MARKED BY THE
12 REPORTER.)
13 Q. I'm going to hand you two documents marked Exhibits 3
14 and 4. Both these documents have been produced to us
15 during this litigation. Mr. Page, first of all, can you
16 identify, first, Exhibit 3, what's Exhibit 3?
17 A. It just says employee handbook.
18 Q. And is it the employee handbook for Barber?
19 A. Let me take a look at it. It certainly looks pretty
20 familiar. I did notice this one said associate -- I mean
21 employee and this one said associate.
22 Q. That's my next question, actually. What's the
23 difference between these two?
24 A. And there is no difference. I'm not really sure when
25 the terminology was changed. Yes, this does look somewhat
[page 105]
1 outdated. We have got Augustus Barber. This one is
2 outdated.
3 Q. Are you talking about Exhibit 3?
4 A. Exhibit 3. It also has a 1993 date stamp on it.
5 Q. You saw the name of Augustus Barber on the
6 organizational chart?
7 A. He might still very well be there. His son has
8 assumed control of the company. He is the president,
9 Stephen Barber.
10 Q. We won't tell him that you didn't know.
11 A. Please don't. No, he is, in fact, the president. And
12 this one is certainly more up to date.
13 Q. You are referring to Exhibit 4?

A. Exhibit 4,yes.
Q. All right. Now let's look at Exhibit 4 then, use that one. There was a -- actually, I guess I need to use Exhibit 3, the employee handbook. If you would look at page 14, the section called attendance policy and time off. Actually, I don't find the same -- in Exhibit 4, there's -- at page 17, there's a section on attendance policy and time off, but it's somewhat different.
A. You said page 17; is that correct?
Q. Yes.
A. All right.
Q. Was there a change in the attendance and time off

[page 113]

somebody perhaps in a different area or whatnot.
Q. Do you know which is typical, that a person who needs to use the restroom is permitted to use the restroom during the course of the shift or is it more typical that they must wait for -- and go on their lunch break or during a rest break?
A. We certainly suggest they use their lunch break or their -- any type of break.
MR. STEVENS: What is more typical, Tom? If somebody in the middle of a shift says, I need to go, what's typical, do they allow them to go or tell them to wait for a break?
A. My leads -- my expectation is my leads will get them to the bathroom, do what they have to do. I have an open door policy on second shift and any associate can come to my office with a complaint or a suggestion. And I can assure you that if we were, on a daily basis, denying people the use of the bathrooms, I would have a steady line to my office. Are there times when a person might have to wait a little bit, yes.
Q. How do you know-
A. And again -- and again, I can't answer this question

for each and every one of my line leads or crew leads. I'm talking general policy on second shift.
Q. Okay. How do you know, though, that if there was --
[page 117]
from the fact that employees use them in that they're either more sanitary or even if they're more comfortable?
A. Yes, in that respect, I would have to agree that anything we can do to make somebody's stay at Barber Foods more pleasant, it's a benefit to everybody.
Q. Well, employees who are more sanitary or more comfortable, that is something that, in the associates handbook, the company cites as important to the company operations, isn't it?
A. Are you referring to the mission statement?
Q. Several places, actually. The mission statement is one.
A. It makes common sense and it's certainly in line with the company's philosophy.
Q. Okay. Now for those -- all those production employees who have to come to work, go to the cage, get the equipment, go get their lab coats, do all the things they need to do, put them on, put on their hair nets, put on all the equipment they have to put on prior to entering the production floor, come in and be at their work stations in time for the 3:45 P.M. start time, including the exercise and the start time, all right. What's your expectation for how long -- for when an employee should report to work at the front door, the entrance to the building, in order to get through all those steps and be ready to work and not be
[page 118]
late, how long before the 3:45 start time?
A. I think we, basically, told the associates that we would really prefer they not come to work too early. They can come to work 20 or 30 minutes before the shift is to

5 begin.
6 Q. In what context do you tell them that?
7 A. Well, in -- it has to do with parking and associates
8 arriving at Barber Foods. And we found that if they arrive
9 at Barber Foods 20 minutes before their shift, it's
10 perfectly adequate for them to do all the things
they need
11 to do.
12 Q. I'm sorry, 20 minutes, did you say?
13 A I would say 20 minutes would be more than --.
14 Q. The question is what do you tell them.
15 A. Specifically?
16 Q. Yeah.
17 MR. STEVENS: Do you know?
18 MR. FLEMING: I'm asking these questions. He is.
19 getting the point.
20 A. I'm not sure, specifically, what they're told. Again,
21 they work with their trainer. They have contact with their
22 crew lead. And I assume that we would be relatively
23 consistent from line lead to crew lead and so on and so
24 forth, but I can't speak for all of them. Obviously, they
25 want to be up in the production floor in a timely fashion.
[page 119]
1 Q. That's the point. They want to be up there in a
2 timely fashion, so you must -- you indicated you tell them
3 something about how to do that because they have got to
do
4 these other -- these various steps, right, and you teach
5 them that, you train them that, right?
6 A. Right.
7 Q. So it stands to reason you tell them you better get
8 here so many minutes before your start time in order to be
9 ready, don't you do that?
10 A. I'm not sure we specify you have got to be up there at
11 3:45 or whatever.
12 Q. I didn't say, got to be. In the training -- in the
13 course of the training and the orientation that you said

14 goes on for two or three weeks and they're showing them how
15 to put on the equipment, they have got to do it the right
16 way, right, you can't wear your hair net half cocked, you
17 have to have it on right, you have to have the hearing
18 protection, you have to have whatever it is you have to
19 have for your job, and you spend two to three weeks
20 training people in how to get that right?
21 A. Notjust-22
Q. There are other aspects as well?
23 A. That's part of it, certainly.
24 Q. So don't they need to know -- and you do tell them
25 definitely they have to have this on before they come onto

Exhibit 12
BARBER FOODS
ASSOCIATE
HANDBOOK

NOTE: THIS IS NOT TO BE CONSIDERED AS AN EMLOYMENT CONTRACT – ANY EMPYLOYMENT AT BARBER FOODS IS OF AN "AT WILL" NATURE.

The company reserves the right or alter, reduce or eliminate any pay practice, policy benefit without notice.

[page 14] **VI DAYS AND HOURS OF WORK**

HOURS OF WORK OPERATIONS DEPARTMENTS

NORMAL HOURS:

1st Shift - 6:45 A.M. to 3:15 P.M.
2nd Shift- 3:45 P.M. to 12:15A.M.
3rd Shift- 11:45 P.M. to 6:45 AM.

The schedule of breaks is as follows:

1st SHIFT-9:00AM-15 min.; 11:00AM – 30 min.; 1:30 PM-10 min.
2nd SHIFT - 6:00 PM - 15 min.; 8:00 PM- 30 min.; 10:00PM – 10 min.
3rd SHIFT - 3:30 AM-30 min.

All hours of work are variable to some degree depending on the company's need for set up and cleanup. Your supervisor will notify you if a time change is necessary.

ALTERNATE HOURS

There are bound to be some deviations to the "normal" work hours within some departments and in specific jobs: If y are expected to work a different or changing schedule, your supervisor will discuss it and. document it for you.

Accounting Corporate Administration, Customer Accounts Administration, Human Resources, Information Systems, Operation Administration, Product Development, Quality Control, Sales and Marketing Departments may have other basic schedules.

OVERTIME

Overtime is occasionally necessary in our business, and associates are asked to be able to work overtime when the

need arises. Hourly associates are paid overtime at the rate of 1½ times your basic straight time hourly wage. See the section "Overtime" on page 12.

BAD WEATHER CLOSING

To find out whether the plant or offices will be open in bad weather, tune to the radio stations listed on the bulletin board during snow season.

Should Barber Foods not be listed as closed, yet you are sure you will be unable to get to work, call your supervisor as outlined in call-in' procedure. Plant management will decide whether anyone unable to get to work because of the weather (when the plant is open) will be considered absent. PLEASE CONSULT THE ATTENDANCE POLICY IN THE NEXT SECTION.

October 1996
**Handwriting omitted.*

[page 17]

IX ATTENDANCE POLICY AND TIME OFF

Every job at Barber Foods exists because it is vital to the success of the company. Associates performing these jobs are the most important resource at Barber Foods. The level to which associates perform in these jobs determines, in large measure, the success of Barber Foods in achieving its goals and being true to its values (customer satisfaction, respect for individuals, innovation, goal achievement, teamwork, etc.). Attendance is the starting point of performance; therefore, it is weighed heavily in performance considerations. Attendance problems will be dealt with as performance issues through the Discipline Without Punishment program.

> Coaching - will begin when absence patterns occur or at the supervisor's discretion.

Formal Transactions - Guidelines . -

Step 1 - Any 4 absences within the last 13 weeks will result in an Oral Reminder

Step 2 - Additional steps will be initiated based upon. the expectations developed in the Oral Reminder.

Associates are expected to call their supervisor, prior to the beginning of their work schedule, when they will be absent.

EXCUSED ABSENCES

The absences listed below are excused and will not affect your attendance record.

1. - Professional appointments

2. - Funeral leave - excused

3. - Scheduled time off

4. - Disciplinary

5. - No work

PAID TIME OFF

Effective January 1, 1997, all hourly associates accrue Paid Time Off at the rate of 32 hours (4 days) per calendar year (accrual calculations based on paid hours), starring upon employment. Associates can accumulate up to 160 hours of PTO. Any hours over 40 can be sold back to Barber Foods at current rate of pay in units of 8 hours. Benefits of this provision are payable - if eligible - for any normal work day without loss of other benefits, with the following provisions:

• No more than your normal scheduled number of hours of total paid time on one day.
• No paid time off is accrued on overtime hours.
• The associate must request paid time off at the time of reporting in as absent if desired.
• Rules regarding notification are in effect. Absence will be considered an attendance absence if otherwise; valid request for Paid Time Off is not made before the start of the shift.

October 1996

[Page 25] **CORPORATE SAFETY POLICY**

Barber Foods is responsible for providing a safe and healthy work environment for all company associates. We believe that no job is so important that your safety has to be jeopardized in order to accomplish it. In recognition of this philosophy, all managers and supervisors are responsible for:

1. Placing safety on a priority level with production. quality, cost control and good associate relations.
2. Assuring that all work hazards/exposures are controlled and managed.
3. Assuring that all associates are appropriately trained before being assigned to work.
4. Assuring adherence to safe operating procedures/safety rules as a condition of employment.

All associates are responsible for working safely and looking out for the safety of others.

We are convinced that the company will be most successful when all associates are working safely in a safe environment. Therefore, the company will commit resources to assure that everyone's attitude and the working environment contribute

to the achievement of an "injury free" workplace. A safe working environment and success go hand in hand. We are convinced that everyone will receive direct personal benefits by working safely.

"Safety in what we do is as important as anything we do"

October 1996

[Page 28] **DRESS CODE AND UNIFORMS**

All production associates must follow U.S.D.A. and safety rules detailing their manner of dress. Full length pants (jeans/sweats, etc.) are required. Please pay careful attention to these rules for the sake of your own good health and product quality.

All administrative associates must abide by footwear and U.S.D.A. rules while in production areas. Otherwise they may use casual or dress attire and must be clean and neat.

FOOT WEAR

In addition to meeting U.S.D.A requirements all footwear worn in the plant areas of Barber Foods must pass a safety inspection at all times. No high heels are permitted and 75% of the sole must be adequately treaded. Failure of the inspection will mean issuance and acceptance of company furnished footwear or suspension.

U.S.D.A. RULES

1. No food or drink in locker or restrooms.
2. Must keep your person and clothes clean and odor free.
3. Must wear clean lab coats in production areas.

4. Must wear hair nets in production areas.
5. Each entry in production area requires sanitation of hands in iodine bath.
6. No opened toed or open heeled shoes.
7. No nail polish unless you wear gloves.
8. No dangling or multipart jewelry.
9. No rings with stones or filigree unless wearing gloves.
10. No watches.
11. No buttons, badges, pins or stickers to be worn on outer clothing.
12. No aprons and/or lab coats to be worn in restrooms.
13. All associates must wash hands upon leaving restrooms.
14. No spitting on floor, no wiping of nose while on the production line. Step back when coughing (cover mouth), wiping nose with handkerchief or paper towel and then wash hands.
15. Those wearing aprons must remove them before leaving production areas. This applies to production associates only.
16. Those not wearing aprons must remove lab coats before leaving production areas. This applies to production associates only.

ISSUANCE OF PERSONAL EQUIPTMENT

The company issues all necessary personal protective equipment. You will not be charged for this equipment unless you lose it or intentionally damage it. See your supervisor if you need to exchange any equipment.

PERSONAL HYGIENE POLICY

As a company involved in food processing, it is necessary that certain minimum standards of personal hygiene and

behavior be expected from all associates. In addition to any procedures or policies outlined elsewhere, you are expected to take sufficient care of yourself and your clothing so as not to offend your co-workers or be a source of concern or embarrassment to the company.

October 1996

Exhibit 13

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL NO.CV-00-371-P-C
	)	
BARBER FOODS,	)	
	)	
Defendant.	)	

BARBER FOODS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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[Page 5]
production floor to the cafeteria/break area, so the actual time away from production is 35 minutes, 5 paid and 30 unpaid.[12]

4.3. Associates may leave the premises during their breaks. They must remove their lab coat before leaving the plant.[73]

4.4. Sanitation associates on the third shift are paid from punch-in to punch-out, with no deduction for an unpaid meal break.[74]

5. SANITARY/SAFETY CLOTHING/EQUIPMENT - GENERAL

5.1. All associates are required to have on the following sanitary and/or safety clothing or equipment before entering the production floor: lab coat, hairnet, beardnet (if applicable) and earplugs. Since October 15, 2001, Barber Foods has also required all associates on the production floor to wear safety glasses. Before October 15, only certain positions or tasks required safety glasses.[75]

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[73] Bickford Affidavit, ¶ 14.
[74] Bragg Affidavit, ¶ 7.
[75] Whittier Affidavit, ¶ 2.

5.2. In addition to the lab coat, hairnet/beardnet, earplugs, and safety glasses required by every associate entering the production floor, there are other items of clothing or equipment worn by some [page 6] associates for safety, sanitary, or comfort purposes. Depending upon job classification, assignment, and personal preference, some [Page 6] combination of the following may be worn: vinyl gloves, cotton glove liners, vinyl aprons, sleeve covers, bump hats, back belt, steel-toed boots.[76]

5.3. Lab coats and cotton glove liners are available to the associates in the hallway between the cafeteria and the equipment cage. The lab coats are on hanger racks and the cotton glove liners are in tubs separated by size.[77]

5.4. Hairnets, beardnets, earplugs, vinyl gloves, sleeve covers, and aprons are dispensed from the window of the equipment cage.[78]

5.5 Vinyl gloves, sleeve covers, and aprons are also available from tubs on the production floor. Associates may obtain these items from the window or the tubs, at their option. Most associates obtain sleeve covers and aprons, if they choose to wear them, from the tubs on the production floor.[79]

5.6. Before August 3, 1999, hairnets/beardnets, earplugs, vinyl gloves, sleeve covers, and aprons, along with lab coats and cotton glove liners, were available to associates from racks and tubs in the cafeteria. Since August 3, 1999

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[76] Whittier Affidavit, ¶ 3.
[77] Whittier Affidavit, ¶ 4.
[78] Whittier Affidavit, ¶ 5.
[79] Whittier Affidavit, ¶ 6.

these items, with the exception of the lab coats and glove liners, have been dispensed from the cage.[80] [page 7]

5.7. The cage is open continuously from 5:00 a.m. - 1:00 a.m. It is staffed by one associate, with a second assistant from 5:30 a.m. - 7:30 a.m. and 1:30 p.m. - 4:00 p.m.[81]

5.8. There are male and female locker rooms and all associates are offered the use of a locker. Associates may use their lockers at their option to store reusable clothing or equipment such as safety glasses, bump hat, back belt, safety boots, and for personal belongings or clothing.[82]

6. SANITARY/SAFETY CLOTHING/EQUIPMENT - BY JOB CLASSIFICATION

The required clothing/equipment in each relevant job classification are:

6.1. Rotating Associates[83]

- Lab coat
- Hairnet/beardnet
- Earplugs
- Safety glasses

6.2. Set-up Operators[84]

- Lab coat
- Hairnet

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[80] Whittier Affidavit, ¶ 7.
[81] Whittier Affidavit, ¶ 8.
[82] Whittier Affidavit, ¶ 9.
[83] Smith Affidavit, ¶ 2.
[84] Ive Affidavit, ¶ 2.

- Earplugs
- Safety glasses
- Steel-toed boots
- Bump hat
- Back belt [page 8]
- LOTO (lock out/tag out)

6.3. Meatroom[85]

- Lab coat
- Hairnet/beardnet
- Earplugs
- Safety glasses
- Gloves (vinyl)
- Apron (heavier-weight vinyl)
- Sleeve covers (heavier-weight vinyl)
- Rubber steel-toed boots
- Back belt
- LOTO

6.4. Shipping & Receiving[86]

- Safety glasses
- Steel-toed boots
- Bump hat/hard hat

Lab coat, hairnet/beardnet, and earplugs are required whenever enter the production floor. Freezer-wear required when enter freezer.

6.5. Maintenance[87]

- Safety glasses

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[85] Goodwin Affidavit, ¶ 2.
[86] Scanlin Affidavit, ¶ 2.
[87] Shaw Deposition: 11.3-11.24, 12.19-13.9, 19.14-19.20, 20.1-20.17.

- Steel-toed boots
- LOTO

Lab coat, hairnet/beardnet, and earplugs are required whenever enter the production floor. Specific safety equipment, e.g., welding mask, required depending [Page 9] upon task being performed.

6.6. Sanitation[88]

- Lab coat
- hairnet/beardnet
- Earplugs
- Safety glasses
- Gloves
- Rain pants
- Rubber steel-toed boots
- Bump cap
- Hose nozzle
- LOTO
- Tool clip (with 3 wrenches) (Level 2 associates)

7. SANITARY/SAFETY CLOTHING/EQUIPMENT - POST-SHIFT DISPOSAL

7.1. Lab coats and cotton glove liners are laundered and reused. Laundry bins are located at several locations along the hallway from the production floor exits to the plant exits and associates drop the coats and liners in these bins on their way out of the plant.[89]

7.2. Vinyl gloves, sleeve covers, and aprons are disposable. Trash bins are located on the production floor

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[88] Bragg Affidavit, ¶ 2.
[89] Page Affidavit, ¶ 2.

and along the hallway from the production floor exits to [Page 10] the plant exits. These items may be removed and deposited in the trash bins on the production floor before punching out if the associate chooses.[90]

7.3. Bump hats, back belts, safety glasses, steel toed safety boots, and reusable earplugs are retained by associates and may be stored in their locker, in their vehicle, or taken home, at their option.[91] Most associates issued steel-toed boots wear them home.[92]

8. TIME KEEPING PRACTICES

8.1. Barber Foods utilizes a computerized time-keeping system. Each associate has a swipe card with a bar code. The system downloads clock punches into the payroll software.[93]

8.2. Time clocks are located at the entrances/exits to the production floor and at the various production areas, such as packout 1, specialty 2, meatroom, etc.[94]

8.3. Rotating associates, set-up operators, and meatroom associates generally punch in at a clock in the area where they will be working and punch out on the "out" clocks which are located next to the two primary entrances/exits.[95] Maintenance

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[90] Page Affidavit, ¶ 3.
[91] Page Affidavit, ¶ 4.
[92] Page Affidavit, ¶ 4.
[93] Bickford Affidavit, ¶ 15.
[94] Bickford Affidavit, ¶ 16.
[95] Smith Affidavit, ¶ 3; Ive Affidavit, ¶ 3; Goodwin Affidavit, ¶¶ 3-4; Page Deposition: 99.16-100.5.

Exhibit 14
BARBER FOODS
EMPLOYEE HANDBOOK

NOTE: THIS IS NOT TO BE CONSIDERED AS AN EMPLOYMENT CONTRACT – ANY EMPLOYMENT AT BARBER FOODS IS OF AN "AT WILL" NATURE

The company reserved the right to alter, reduced or eliminate any pay practice policy or benefit without notice.
**Handwriting omitted.*

[page 23] **CORPORATE SAFETY POLICY**

Barber Foods is responsible for the health and welfare of all company employees as they relate to work performed here. We believe that no job is so important that your safety has to be jeopardized in order to accomplish it. In recognition of

this philosophy, all managers and supervisors are responsible for:

1. Placing safety on a priority level with production, quality, cost control and good employee relations.
2. Assuring that all work hazards/exposures are controlled and managed.
3. Assuring that all employees are appropriately trained before being assigned to work.
4. Assuring adherence to safe operation procedures/safety rules as a condition of employment.

OCTOBER 1993
**Handwriting omitted*

[page 25] **DRESS CODE AND UNIFORMS**

All employees must follow U.S.D.A. and safety rules detailing their manner of dress. Please pay careful attention to these rule1or the sake of your own good health and product quality.

FOOT WEAR

In addition to meeting U.S.D.A requirements all footwear worn in the plans areas of Barber Foods must pass a safety inspection at all times. No high heels are permitted and 75% of the sole must be adequately treaded. Failure of the inspection will mean issuance and acceptance of company furnished footwear or suspension.

U.S.D.A. RULES

1. Must keep your person and clothes clean and odor free.
2. Must wear clean white coats in production area.
3. Wear hair nets in production area.
4. No opened toed or open heeled shoes.
5. No nail polish unless you wear gloves.

6. No dangling or multipart jewelry.
7. No rings with stones unless wearing gloves.
8. No buttons, badges, pins or stickers to be warn on outer clothing.
9. No aprons and/or white coats to be worn in toilet areas.
10. All employees must wash hands upon leaving toilet areas.
11. Do not carry anything in upper pocket of white coat.
12. No spitting on floor, no wiping of nose while on the production line. Step back when coughing (cover mouth), wiping nose with handkerchief or paper towel and then wash hands.
13. Those wearing aprons must remove them before leaving production areas. This plies to production employees only.
14. Those not wearing aprons must remove white coats before leaving production areas. This applies to production employees only.
15. No food or beverages to be consumed in the restroom.

ISSUANCE OF PERSONAL EQUIPMENT

The company issues all necessary personal protective equipment such as aprons, white coats, hair nets, metal mesh gloves and safety glasses. You will not be charged for this equipment unless you lose it or intentionally damage it. See your supervisor if you need to exchange any equipment.

PERSONAL HYGIENE POLICY

As a company involved in food processing, it is necessary that certain minimum standards of personal hygiene and behavior be expected from all employees. In addition to any procedures or policies outlined elsewhere in this program, you are expected to take sufficient care of yourself and your

clothing so as not to offend your co-workers or be a source of concern or embarrassment to the company.

OCTOBER 1993
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Exhibit 15
Barber Foods
Job Description

JOB TITLE: Production Worker

Exempt (Y/N): No SALARY LEVEL:
DEPARTMENT: Operations
PREPARED BY: Human Resources DATE:

SALARY: Performs repetitive bench or line assembly operations to mass-produce products.

ESSENTIAL DUTIES AND RESPONSIBILITIES include the following. Other duties may be assigned.

Performs routine, repetitive assembly or the production of finished goods.

Responsible for assembling products according health and safety regulations. Ensures product is produced with top quality.

Performs duties that include, but are not limited to, inserting stuffing, arranging pieces and folding chicken.

SUPERVISORY RESPONSIBILITIES:
None.

QUALIFICATION REQUIREMENTS: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.
**Handwriting omitted.*

EDUCATION and/or EXPERIENCE:
Typically has a basic level knowledge and no prior experience requirement.

PHYSICAL DEMANDS: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel objects, tools, or controls and reach with hands and arms. The employee frequently is required to sit. The employee is occasionally required to stand. [Page 2]

The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

WORK ENVIRONMENT: The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works near moving mechanical parts and is regularly exposed to extreme cold.

The noise level in the work environment is usually loud.

Exhibit 16
Barber Foods
Job Description

JOB TITLE: Sanitation II

entered 12/12/96

Exempt (Y/N): No SALARY LEVEL:
DEPARTMENT: Operations
PREPARED BY: Human Resources DATE:

SUMMARY: Performs the sanitation function including the cleaning of the entire production line to ensure sterilization.

ESSENTIAL DUTIES AND RESPONSIBILITIES include the following. Other duties may be assigned.

Responsible for the disassembly and assembly of complex production machinery. Ensures all equipment is assembled for first shift production.

Ensures all equipment is sanitized according to State and Federal regulations.

Uses dishwasher, pressure washers, and other mechnical aids to perform sanitary function.

Works directly with hazardous chemicals and equipment.

May be responsible for training lower level sanitation staff on proper procedures for sanitizing production equipment.

SUPERVISORY RESPONSIBILITIES:
None.

**Handwriting omitted.*

JOB LEVEL GUIDELINES:
Performs work that is routine in nature. Normally receives general supervision, although more detailed instructions are provided when performing new assignments. The incumbent uses established procedures and although not required, may exercise limited judgement and/or innovation. May assist in developing new methods for improving work processes and/or company operations.

QUALIFICATION REQUIREMENTS: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with
disabilities to perform the essential functions. [Page 2]

Job Description
Job Title: Sanitation II

EDUCATION and/or EXPERIENCE:
Typically has a high school level of knowledge or equivalent and one to twelve months of related experience.

PHYSICAL DEMANDS: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to stand and use hands to finger, handle, or feel objects, tools, or controls. The employee is occasionally required to walk, reach with hands and arms, and talk or hear.

The employee must occasionally lift and/or move up to 40 pounds. Specific vision abilities required by this job include close vision, color vision, and the ability to adjust focus.

WORK ENVIRONMENT: The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly exposed to toxic or caustic chemicals. The employee frequently works near moving mechanical parts. The employee is occasionally exposed to extreme cold. Must wear protective clothing, eyewear, and earwear.

The noise level in the work environment is usually loud.

Exhibit 17
Barber Foods
Job Description

JOB TITLE: Set-Up Operator I

Exempt (Y/N): No SALARY LEVEL:
DEPARTMENT: Operations
PREPARED BY: Human Resources DATE:

SUMMARY: Performs basic set-up operator duties, including monitoring controls, electronics, and programming of machines.

ESSENTIAL DUTIES AND RESPONSIBILITIES include the following. Other duties may be assigned.

Responsible for ensuring assigned equipment is set-up and running according to the production schedule.

May perform basic maintenance on machines. Contacts Maintenance Mechanic if necessary.

Responsible for ensuring all production equipment is set up according to production schedule, including labels, batter, stuffing, etc.

Interacts with Line Leads to determine equipment set-up and operation.

Ensures all production equipment is prepared on-time for production.
May be responsible for adjusting formers, batter, and packaging when production turn-overs occur.

**Handwriting omitted.*

SUPERVISORY RESPONSIBILITIES:
None.

JOB LEVEL GUIDELINES:
Performs work that is routine in nature. Normally receives very detailed and specific instructions. Opportunities for judgement and/or innovation are very rare. Competent in major elements of the job after moderately short training period.

QUALIFICATION REQUIREMENTS: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. [Page 2]

EDUCATION and/or EXPERIENCE:
Typically has a high school level of knowledge or equivalent and up to one month of related experience.

PHYSICAL DEMANDS: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to stand and use hands to finger, handle, or feel objects, tools, or controls. The employee is occasionally required to walk, sit, reach with hands and arms, and talk or hear.

The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

WORK ENVIRONMENT: The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing he duties of this job, the employee is frequently exposed to extreme cold. Must wear protective clothing, eyewear, and earwear.

The noise level in the work environment is usually moderate.

Exhibit 18

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ABDELA TUM, NAJIBSAYED, CELSO FLORENDO and TADEUSZ OLSZYNSKI,	)	
Plaintiffs,	)	CIVIL NO.CV-OO-37 1-P-C
v.	)	
BARBER FOODS,	)	
Defendant.	)	

BARBER FOODS' ANSWERS TO
FIRST SET OF INTERROGATORIES

1. Identify and describe fully each and every policy, practice, and/or procedure of Barber Foods instructing, requiring, or recommending its hourly wage employees at its plant in Portland, Maine, to arrive at work prior to the beginning of their shifts in order to obtain, and/or change into sanitary, safety, or protective clothing, equipment, and/or gear and/or to obtain equipment, tools and/or gear, and describe the full and complete reason(s) each such policy, practice, and/or procedure was originated or implemented for use.

ANSWER: [page 2]

There is no such policy, practice or procedure. Barber Foods does allow associates to punch in up to six minutes before the start of their scheduled shift.

2. For each hourly wage job classification at Barber Foods, what are all of the specific job duties and responsibilities?

ANSWER:

See the Job Descriptions which were provided under Attachment B to the responses to the first set of document requests.

3. For each hourly wage job classification at Barber Foods, what sanitary, safety, or protective clothing, equipment, and/or gear and/or equipment, tools and/or gear, are hourly wage employees required to wear and/or use?

ANSWER:

Line Workers:	coat, hair net, beard cover (if applicable), hearing protection, sleeves, back belt (if a lugger);
Set-up Operators:	coat, hair net, beard cover (if applicable), hearing protection, sleeves, back belt, safety glasses, safety boots, LOTO, tools;
Shipping:	coat, hair net, beard cover (if applicable), hearing protection, safety shoes, bump or hard hat;
Meat Room:	coat, hair net, beard cover (if applicable), hearing protection, safety glasses, safety boots, bump hat;

Cook Room: coat, hair net, beard cover (if applicable), hearing [page 5]

6. Does Barber Foods require hourly wage employees to clean, repair, or maintain clothing, equipment, gear, or tools? If so, provide details regarding which hourly wage employees are required to do so, and describe fully and specifically the nature of such duties.

ANSWER:

Associates in the sanitation department hose off their rain gear while they are still wearing it and while they are still on the clock. The gear is then hung on hooks in the locker room, in the associates' lockers, or on hooks in the chemical room.

7. Describe in detail all method(s) by which Barber Foods records, computes, measures, monitors, and/or memorializes the attendance, work time, and break time of its hourly wage employees, and specify in detail any changes, and full and complete reasons therefore, to such method(s) at any time since December 1, 1997.

ANSWER:

Barber Foods utilizes a computerized time and attendance system. Each associate has a swipe card with a bar code. The system downloads clock punches into the payroll software. Crew and line leads are responsible for monitoring time punch accuracy and attendance. The leads are supposed to check the computer daily to check associate punches. They also receive a weekly printout of the associates' daily punches. The leads are also responsible for monitoring and entering into the [page 6] computer any time off, such as excused or unexcused absences,

arriving late or leaving early, leaves, vacation, paid time off, etc. There have been no appreciable changes in the system since December 1997.

8. Identify every person known to Barber Foods to have had any responsibility or involvement in the recording, computation, measurement, monitoring, and/or memorialization of the attendance, work time, and break time of Barber Foods' hourly wage employees or in the supervision of Barber Foods, hourly wage employees and specify the job duties and responsibilities of each such person and the time frames during which such person had those duties or responsibilities.

ANSWER:

As described in the response to interrogatory #7, crew and line leads, supervisors, and managers are responsible for monitoring attendance and the accuracy of associate clock punches. They are identified in the organizational charts which were provided under Attachment 9 to the response to the first set of document requests. Their job duties are described in the job descriptions which were provided under Attachment B to the responses to the first set of interrogatories.

9. What are the meanings of the terms "line time" and "break time" or any similar terms, as used by Barber Foods?

Exhibit 19

PERSONAL PROTECTIVE EQUIPMENT

PURPOSE

The purpose of this procedure is to identity and provide personal protective equipment appropriate and adequate to control personal exposure to hazards.

OBJECTIVE
COMPLIANCE MEASURES

Where an item of Personal Protective Equipment is specified in the company P.P.E. analysis (as well as in job procedures or by signage), it must be readily available, Use is mandatory and it is expected that work area managers and supervisors enforce use.

All associates who are required to use Personal Protective Equipment (P.P.B.) have been trained. (What the hazard is, why P.P.E. is necessary, how to use it effectively, what it can be expected to do and not do, how to care for it and when to replace it.)

PROTECTIVE EQUIPMENT USUALLY CONSIDERED

>**Vision** hazard: safety glasses, goggles (chemical goggles, burning goggles, flying particle goggles), lace shields, area or process shields
>**Face** hazard: face shields, chemical hoods, welding hoods, process shields
>**Head** hazards: hard hat or bump hat
>**Hearing** hazard: see "hearing protection" procedure
>**Breathing** hazard: see "respiratory protection" procedure
>**Chest (body)** hazards: chemical aprons to protect from caustic chemicals or hot material (hot glue); **rubber** chemical

**Handwriting omitted*

jackets (no vinyl rain gear if the hazard is a caustic or acid)
>**Hand** hazards: a **wide variety** of gloves, each designed to address different kinds of hazards. No one glove can address all hazards. Gloves come in sizes and must fit the user. (consider: liquids, heat, cold)
>**Arm / skin** hazards: Rubber, vinyl or plastic arm shields protect the wrists and upper arms from splashing liquids (no vinyl if the hazard is a caustic or acid)
>**Leg / skin** hazards: **Rubber** rain pants (no vinyl rain gear if the hazard is a caustic or acid)
>**Foot / toe** hazards: Slip-resistant soles, steel-toed work boots.
January, 1999

Exhibit 20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFF NICHOLAS ALAN BEARCE'S ANSWERS TO DEFENDANT BARBER FOODS' INTERROGATORIES

COMES NOW Plaintiff Nicholas Alan Bearce, objects and responds to the Defendant's Interrogatories as follows:

GENERAL OBJECTIONS

1. The Plaintiff objects to the definitions and instructions accompanying these interrogatories to the extent that they seek to impose burdens, duties and obligations upon the Plaintiff in excess of or different from those imposed by applicable law and the Federal Rules of Civil Procedure; Plaintiff will respond in accordance with said law and rules.

2. The Plaintiff objects to these interrogatories to the extent that they are overly burdensome and seek information regarding matters about which the Defendant, Barber Foods, has knowledge.

3. The Plaintiff objects to these interrogatories to the extent they seek to discover "core" work product, including the disclosure of the mental impressions, conclusions, opinions, and/or legal theories of attorneys or other representatives of the Plaintiff.

4. The Plaintiff objects to these interrogatories and document requests to the extent they seek information protected by the attorney-client privilege or any other applicable privilege.

5. The Plaintiff objects to these interrogatories and document requests to the extent that the information sought, if any, was obtained and prepared in anticipation of litigation and the Defendant has not made the required showing of substantial need for the [Page 2] information or that the substantial equivalent of such information is unobtainable by other means. The Plaintiff further objects to these interrogatories to the extent that the information called for, if any, is privileged and is not discoverable under Fed. R. Civ. P. Rule 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947).

6. The Plaintiff objects to these interrogatories to the extent that they seek to require the Plaintiff's attorneys to divulge the substance of information developed by them, including the subject matter of each discussion with Plaintiff's counsel (*i.e.*, interpretive, not investigatory) in preparation for the trial of this action.

7. The Plaintiff objects to these interrogatories to the extent that they are oppressive, i.e., they were designed to create an unreasonable burden on the Plaintiff, which burden is not commensurate with the professed result sought.

The Plaintiff answers the specific Interrogatories as follows:

Interrogatory No. 1: *State all job positions held by you at Barber Foods from December 1, 1997 to the present; include in your answer the shift on which you worked in each position.*

Answer to Interrogatory No. 1: Maintenance Engineer on first and second shift.

Interrogatory No. 2: *Identify in chronological order your immediate supervisor(s) from December 1, 1997 to the present.*

Answer to Interrogatory No. 2: Mark Duest, Bruce McIntyre, and Richard. I do not remember Richard's last name.

Interrogatory No. 3: *Identify any person from whom you or your representatives have obtained a written or recorded statement.*

Answer to Interrogatory No. 3: None that I am aware of.

Interrogatory No. 4: *Identify any person who made any comments or statements or took any action which you contend was intended to or had the effect of discouraging any Barber Foods' employee from participating in this lawsuit, or in any way threatened, explicitly or implicitly, retaliation or repercussion if an employee participated; describe as well the substance of any such comment, statement, or action.*

Answer to Interrogatory No. 4: None that I am aware of.

Interrogatory No. 5: *Identify any person who ever instructed or recommended, or told you that you were required, to arrive at work before the beginning* [Page 3] *of your scheduled shift; describe the substance of what you were told by each such person.*

Answer to Interrogatory No. 5: Bruce Macintyre told me to get to work 15 minutes early to get ready for the shift.

Interrogatory No. 6: *At any time after December 1, 1997, were you ever denied the opportunity to go to the bathroom during a shift? If so, how many times, when, and identify the person who refused permission.*

Answer to Interrogatory No. 6: No.

Interrogatory No. 7: *At any time after December 1, 1997, were you ever required to visit the medical office during your unpaid break? If so, how many times, when, and identify the person who required you to visit the office during this time.*

Answer to Interrogatory No. 7: Yes. I had to go to the nurse's office during my lunch break about 3-4 times. Each visit lasted approximately 30 minutes.

Interrogatory No. 8: *For all job positions held by you after December 1, 1997, state all sanitary, safety or protective clothing, equipment, or gear which you were required to wear.*

Answer to Interrogatory No. 8: Boots, coveralls, snow suits, hair and beard nets, gloves, white coat, ear plugs, back belt, bump hat, tools. Depending on the area in which I work, I sometimes also was required to wear sleeve covers, safety glasses, or an apron.

Interrogatory No. 9: *For all job positions held by you after December 1, 1997, state all sanitary safety, or protective clothing, equipment, or gear which was optional and which you chose to wear.*

Answer to Interrogatory No. 9: None that I know of.

Interrogatory No. 10: *At any time after December 1, 1997, did you have a locker at Barber Foods? If so, state:*

a. Which clothing, equipment, or gear did you generally store in your locker;

b. Which clothing, equipment, or gear did you generally bring home with you.

Answer to Interrogatory No. 10:

a. Bump hat, coveralls, back belt, tools, safety glasses, shoes [Page 4]

b. Tools.

Interrogatory No. 11: *Describe specifically all work performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 11: Walking from the building entrance to my locker, putting equipment on, going to the supply area in the maintenance shop, getting equipment from the supply area, and double checking my tools.

Interrogatory No. 12: *Describe specifically all work performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your*

scheduled shift for which you claim you were entitled to be paid but were not paid for.

Answer to Interrogatory No. 12: I typically was not permitted to take time off during the two paid breaks and, instead, I had to work through these breaks. On one occasion when I asked for a break, Mark told me, "You actually want a break? You're working in the wrong department." Additionally, I typically only got approximately 15 minute lunch break, even though lunch break was supposed to last 30 minutes, and 30 minutes were deducted from my paycheck for lunch. During my lunch break, I also took approximately 5 minutes to take off some of my equipment, walk to the break area, walk back from the break area, and put my equipment back on. I also had to visit the nurse's office approximately 3-4 times during my lunch break, each visit for approximately 30 minutes.

Interrogatory No. 13: *Describe specifically all work performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 13: Taking off my clothing, equipment, and gear, putting equipment away in my locker, throwing away or laundering equipment, walking among my work area, to throw away or launder equipment, and cleaning my tools.

Interrogatory No. 14: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 14: See Answer to Interrogatory No. 11. Each day, this procedure took approximately 10-15 minutes.

Interrogatory No. 15: *From December 11, 1997 to the present, state* [Page 5] *specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 15: See Answer to Interrogatory No. 12.

Interrogatory No. 16: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 16: See Answer to Interrogatory No. 13. Each day, this procedure took approximately 20-25 minutes.

Interrogatory No. 17: *From December 11, 1997 to the present, state specifically by date and amount of minutes and/or hours each date, all uncompensated time spent visiting the medical office for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 17: I had to visit the nurse's office approximately 3-4 times during my lunch break, each visit for approximately 30 minutes.

[Page 6] I declared under penalty of perjury that the foregoing is true and correct.

Dated 11/8, 2001 _____

Nicholas Alan Bearce

**Handwriting omitted.*

Exhibit 21

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFF ALLISON CAREY'S ANSWERS TO DEFENDANT BARBER FOODS' INTERROGATORIES

COMES NOW Plaintiff Allison Carey, objects and responds to the Defendant's Interrogatories as follows:

GENERAL OBJECTIONS

2. The Plaintiff objects to the definitions and instructions accompanying these interrogatories to the extent that they seek to impose burdens, duties and obligations upon the Plaintiff in excess of or different from those imposed by applicable law and the Federal Rules of Civil Procedure; Plaintiff will respond in accordance with said law and rules.

2. The Plaintiff objects to these interrogatories to the extent that they are overly burdensome and seek information regarding matters about which the Defendant, Barber Foods, has knowledge.

3. The Plaintiff objects to these interrogatories to the extent they seek to discover "core" work product, including the disclosure of the mental impressions, conclusions, opinions, and/or legal theories of attorneys or other representatives of the Plaintiff.

4. The Plaintiff objects to these interrogatories and document requests to the extent they seek information protected by the attorney-client privilege or any other applicable privilege.

5. The Plaintiff objects to these interrogatories and document requests to the extent that the information sought, if any, was obtained and prepared in anticipation of litigation and the Defendant has not made the required showing of substantial need for the [Page 2] or that the substantial equivalent of such information is unobtainable by other means. The Plaintiff further objects to these interrogatories to the extent that the information called for, if any, is privileged and is not discoverable under Fed. R. Civ. P. Rule 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947).

6. The Plaintiff objects to these interrogatories to the extent that they seek to require the Plaintiff's attorneys to divulge the substance of information developed by them, including the subject matter of each discussion with Plaintiff's counsel (*i.e.*, interpretive, not investigatory) in preparation for the trial of this action.

7. The Plaintiff objects to these interrogatories to the extent that they are oppressive, i.e., they were designed to create an unreasonable burden on the Plaintiff, which burden is not commensurate with the professed result sought.

The Plaintiff answers the specific Interrogatories as follows:

Interrogatory No. 1: *State all job positions held by you at Barber Foods from December 1, 1997 to the present; include in your answer the shift on which you worked in each position.*

Answer to Interrogatory No. 1: When I was first hired at Barber, I spent two weeks training as a Line Worker on first shift. I then switched to second shift for approximately 4-6 months. Then I transferred to first shift, still as a Line Worker, and later did administrative work for the meat room on first shift.

Interrogatory No. 2: *Identify in chronological order your immediate supervisor(s) from December 1, 1997 to the present.*

Answer to Interrogatory No. 2: Sonya Dobson, Cathy Smith, Stefan Post, Wendy Walker.

Interrogatory No. 3: *Identify any person from whom you or your representatives have obtained a written or recorded statement.*

Answer to Interrogatory No. 3: No one that I know of.

Interrogatory No. 4: *Identify any person who made any comments or statements or took any action which you contend was intended to or had the effect of discouraging any Barber Foods' employee from participating in this lawsuit, or in any way threatened, explicitly or implicitly, retaliation or repercussion if an employee participated; describe as well the substance of any such comment, statement, or action.*

Answer to Interrogatory No. 4: No one that I know of. [Page 3]

Interrogatory No. 5: *Identify any person who ever instructed or recommended, or told you that you were required, to arrive at work before the beginning of your scheduled shift; describe the substance of what you were told by each such person.*

Answer to Interrogatory No. 5: No one that I know of.

Interrogatory No. 6: *At any time after December 1, 1997, were you ever denied the opportunity to go to the bathroom during a shift? If so, how many times, when, and identify the person who refused permission.*

Answer to Interrogatory No. 6: I was denied the opportunity to use the rest room by Stefan, his Rotator, Trang Martin, and Wendy Walker, though I do not remember how many times or when.

Interrogatory No. 7: *At any time after December 1, 1997, were you ever required to visit the medical office during your unpaid break? If so, how many times, when, and identify the person who required you to visit the office during this time.*

Answer to Interrogatory No. 7: I was required to visit the offsite Medical Office approximately 2-3 times for serious injuries, and the onsite medical center approximately 10 times. Of the ten onsite visits, about half were with the nurse and about half were with the doctor. Each onsite visit with the nurse took approximately 5-10 minutes and each onsite visit with the doctor took approximately 30 minutes. Offsite visits took longer.

Interrogatory No. 8: *For all job positions held by you after December 1, 1997, state all sanitary, safety or protective clothing, equipment, or gear which you were required to wear.*

Answer to Interrogatory No. 8: For line work I wore a hairnet, gloves, ear plugs, coat liners, and safety glasses. For the meat room I wore all of the above as well as rubber boots, apron, and a hard hat. For Packout 2, I wore all of the above and gloves, a coat, and ear plugs.

Interrogatory No. 9: *For all job positions held by you after December 1, 1997, state all sanitary safety, or protective clothing, equipment, or gear which was optional and which you chose to wear.*

Answer to Interrogatory No. 9: Gloves and safety glasses or a mask.

Interrogatory No. 10: *At any time after December 1, 1997, did you have a locker at Barber Foods? If so, state:*
[Page 4]

a. *Which clothing, equipment, or gear did you generally store in your locker;*

b. *Which clothing, equipment, or gear did you generally bring home with you.*

Answer to Interrogatory No. 10:

a. Clipboard, boots, hard hat, personal coat and Purse

b. Coat and purse; if they had a locker inspection, which happened about every month or two, I would have to bring everything home.

Interrogatory No. 11: *Describe specifically all work performed by you before clocking in at the beginning of*

your scheduled shift for which you claim you were entitled to be paid but were not paid for.

Answer to Interrogatory No. 11: Every day I worked I had to arrive at least an hour early to put my belongings in my locker, get a hair net, gloves, ear plugs, coat liners, safety glasses, and wait in line for all of these items. I spent additional time traveling among the plant, from the entrance, to the supply area on the ground floor, to the punch clock on the second floor. Often times I was required to walk through the entire plant to get to the punch clock.

Interrogatory No. 12: *Describe specifically all work performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 12: Every day I worked, I spent between 18-24 minutes of my breaks removing gear and traveling from my station to the break area and back. During my shift I had three breaks, each of which I spent approximately 6-8 minutes removing gear and traveling among the plant.

Interrogatory No. 13: *Describe specifically all work performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 13: Removing my gear, traveling from my station to the other side of the plant, waiting to get down the stairs to go to the locker room. This totals approximately 10-15 minutes for every day I worked.

Interrogatory No. 14: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be compensated.* [Page 5]

Answer to Interrogatory No. 14: See Answer to Interrogatory No. 11. Additionally, I spent a total of about 15 hours helping set up the Packout 2 line before clocking in.

Interrogatory No. 15: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 15: See Answer to Interrogatory No. 12.

Interrogatory No. 16: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 16: See Answer to Interrogatory No. 13.

Interrogatory No. 17: *From December 11, 1997 to the present, state specifically by date and amount of minutes and/or hours each date, all uncompensated time spent visiting the medical office for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 17: See Answer to Interrogatory No. 7.

[Page 6] I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11-8-01, 2001

Allison Carey

*Handwriting omitted.

Exhibit 22

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFF ALBERT R. HOWARD, JR'S ANSWERS TO DEFENDANT BARBER FOODS' INTERROGATORIES

COMES NOW Plaintiff Albert R. Howard, Jr., objects and responds to the Defendant's Interrogatories as follows:

GENERAL OBJECTIONS

1. The Plaintiff objects to the definitions and instructions accompanying these interrogatories to the extent that they seek to impose burdens, duties and obligations upon the Plaintiff in excess of or different from those imposed by applicable law and the Federal Rules of Civil Procedure; Plaintiff will respond in accordance with said law and rules.

2. The Plaintiff objects to these interrogatories to the extent that they are overly burdensome and seek information regarding matters about which the Defendant, Barber Foods, has knowledge.

3. The Plaintiff objects to these interrogatories to the extent they seek to discover "core" work product, including the disclosure of the mental impressions, conclusions, opinions, and/or legal theories of attorneys or other representatives of the Plaintiff.

4. The Plaintiff objects to these interrogatories and document requests to the extent they seek information protected by the attorney-client privilege or any other applicable privilege.

5. The Plaintiff objects to these interrogatories and document requests to the extent that the information sought, if any, was obtained and prepared in anticipation of litigation and the Defendant has not made the required showing of substantial need for the [Page 2] information or that the substantial equivalent of such information is unobtainable by other means. The Plaintiff further objects to these interrogatories to the extent that the information called for, if any, is privileged and is not discoverable under Fed. R. Civ. P. Rule 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947).

6. The Plaintiff objects to these interrogatories to the extent that they seek to require the Plaintiff's attorneys to divulge the substance of information developed by them, including the subject matter of each discussion with Plaintiff's counsel (*i.e.*, interpretive, not investigatory) in preparation for the trial of this action.

7. The Plaintiff objects to these interrogatories to the extent that they are oppressive, i.e., they were designed to create an unreasonable burden on the Plaintiff, which burden is not commensurate with the professed result sought.

The Plaintiff answers the specific Interrogatories as follows:

Interrogatory No. 1: *State all job positions held by you at Barber Foods from December 1, 1997 to the present; include in your answer the shift on which you worked in each position.*

Answer to Interrogatory No. 1: Sanitation worker on third shift from December 1, 1997 until approximately until the end of 1999.

Interrogatory No. 2: *Identify in chronological order your immediate supervisor(s) from December 1, 1997 to the present.*

Answer to Interrogatory No. 2: Ken Shayloff, Ray Bragg

Interrogatory No. 3: *Identify any person from whom you or your representatives have obtained a written or recorded statement.*

Answer to Interrogatory No. 3: None

Interrogatory No. 4: *Identify any person who made any comments or statements or took any action which you contend was intended to or had the effect of discouraging any Barber Foods' employee from participating in this lawsuit, or in any way threatened, explicitly or implicitly, retaliation or repercussion if an employee participated; describe as well the substance of any such comment, statement, or action.*

Answer to Interrogatory No. 4: None

Interrogatory No. 5: *Identify any person who ever instructed or recommended, or told you that you were required, to arrive at work before the beginning* [Page 3] *of your scheduled shift; describe the substance of what you were told by each such person.*

Answer to Interrogatory No. 5: Supervisors Ray Bragg and Ken Shayloff told me at orientation that if I did not have all my protective clothing, gear, and equipment on when it was time to punch in, I would be reprimanded.

Interrogatory No. 6: *At any time after December 1, 1997, were you ever denied the opportunity to go to the bathroom during a shift? If so, how many times, when, and identify the person who refused permission.*

Answer to Interrogatory No. 6: Supervisor Ken Shayloff attempted on several occasions throughout my employment at Barber to deny me the opportunity to use the bathroom during my shift but I went anyway.

Interrogatory No. 7: *At any time after December 1, 1997, were you ever required to visit the medical office during your unpaid break? If so, how many times, when, and identify the person who required you to visit the office during this time.*

Answer to Interrogatory No. 7: I was instructed by Supervisor Ken Shayloff to visit the medical office during my unpaid break approximately four or five times throughout my employment at Barber.

Interrogatory No. 8: *For all job positions held by you after December 1, 1997, state all sanitary, safety or protective clothing, equipment, or gear which you were required to wear.*

Answer to Interrogatory No. 8: White coat, hairnet, beard net, blue rubber gloves, white gloves, cotton glove liners, sleeve covers, earplugs, safety glasses, hard hat, back belt, rain gear, rubber boots.

Interrogatory No. 9: *For all job positions held by you after December 1, 1997, state all sanitary safety, or protective clothing, equipment, or gear which was optional and which you chose to wear.*

Answer to Interrogatory No. 9: Sweatshirt

Interrogatory No. 10: *At any time after December 1, 1997, did you have a locker at Barber Foods? If so, state:*

a. Which clothing, equipment, or gear did you generally store in your locker;

b. Which clothing, equipment, or gear did you generally bring home with you. [Page 4]

Answer to Interrogatory No. 10:

a. rain gear, sleeve covers, boots, safety glasses, hard hat, back belt

b. none

Interrogatory No. 11: *Describe specifically all work performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 11: Going to supply room and to my locker, getting equipment, getting dressed in protective clothing and gear, going to coat room and looking for my size, and going to the cafeteria to do required exercises.

Interrogatory No. 12: *Describe specifically all work performed by you between clocking in at the beginning*

of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.

Answer to Interrogatory No. 12: The majority of my 30 minute break was spent doing exercises, getting undressed and dressed in protective clothing, and walking to and from the break room. We were additionally given a fifteen minute break approximately once or twice a week. I spent the majority of this break getting undressed and then redressed in my protective clothing.

Interrogatory No. 13: *Describe specifically all work performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 13: Waiting in line to punch out, removing, throwing away, and laundering equipment, going to my locker taking off protective clothing and gear, dressing in my own clothes, and walking to the exit.

Interrogatory No. 14: *From December 1, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 14: Each day I worked, it took me 2 minutes to walk from the entrance to the supply room and to my locker. It took 10 minutes to get dressed in my protective clothing and gear. It took approximately 5-10 minutes to go to the coat room and look for my size. The exercises took about 5-6 minutes.

Interrogatory No. 15: *From December 1, 1997 to the present, state specifically,* [Page 5] *by date and amount of minutes and/or hours each date, all uncompensated work time performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 15: Every day during my 30 minute break, I was required to do exercises which took about 5-6 minutes. Getting undressed and dressed in my protective clothing and gear took a total of approximately 20 minutes. During my occasional fifteen minute break, it would take me approximately 10 minutes to undress and redress so I ended up with about 5 minutes for myself.

Interrogatory No. 16: *From December 1, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 16: Every day, I would wait in line to punch out for about 10-15 minutes. Removing, throwing away, and laundering equipment took approximately 2 minutes. Walking to the locker room took about another 2 minutes. It took approximately 8 minutes to get undressed and dressed and about another 2 minutes to walk to the exit.

Interrogatory No. 17: *From December 1, 1997 to the present, state specifically by date and amount of minutes and/or hours each date, all uncompensated time spent visiting the medical office for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 17: I visited the medical office during my unpaid break about four or five times throughout my employment at Barber, approximately 30 minutes each visit.

[Page 6] I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11/4, 2001

Albert R. Howard, Jr.

**Handwriting omitted.*

Exhibit 23

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFF ROBERT HUNTLEY'S ANSWERS TO DEFENDANT BARBER FOODS' INTERROGATORIES

COMES NOW Plaintiff Robert Huntley, objects and responds to the Defendant's Interrogatories as follows:

GENERAL OBJECTIONS

3. The Plaintiff objects to the definitions and instructions accompanying these interrogatories to the extent that they seek to impose burdens, duties and obligations upon the Plaintiff in excess of or different from those imposed by applicable law and the Federal Rules of Civil Procedure; Plaintiff will respond in accordance with said law and rules.

2. The Plaintiff objects to these interrogatories to the extent that they are overly burdensome and seek information regarding matters about which the Defendant, Barber Foods, has knowledge.

3. The Plaintiff objects to these interrogatories to the extent they seek to discover "core" work product, including the disclosure of the mental impressions, conclusions, opinions, and/or legal theories of attorneys or other representatives of the Plaintiff.

4. The Plaintiff objects to these interrogatories and document requests to the extent they seek information protected by the attorney-client privilege or any other applicable privilege.

5. The Plaintiff objects to these interrogatories and document requests to the extent that the information sought, if any, was obtained and prepared in anticipation of litigation and the Defendant has not made the required showing of substantial need for the information or that the substantial equivalent of such information is unobtainable [Page 2] by other means. The Plaintiff further objects to these interrogatories to the extent that the information called for, if any, is privileged and is privileged and is not discoverable under Fed. F. Civ. P. Rule 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947).

6. The Plaintiff objects to these interrogatories to the extent that they seek to require the Plaintiff's attorneys to divulge the substance of information developed by them, including the subject matter of each discussion with Plaintiff's counsel (*i.e.*, interpretive, not investigatory) in preparation for the trial of this action.

7. The Plaintiff objects to these interrogatories to the extent that they are oppressive, i.e., they were designed to create an unreasonable burden on the Plaintiff, which burden is not commensurate with the professed result sought.

The Plaintiff answers the specific Interrogatories as follows:

Interrogatory No. 1: *State all job positions held by you at Barber Foods from December 1, 1997 to the present; include in your answer the shift on which you worked in each position.*

Answer to Interrogatory No. 1: I started work as a Production line and Maintenance worker (Lugger) on December 20, 1999. I injured myself in February 2000 while I was shoveling snow and was put on light duty from February 2000 until June 2000. I worked the 2nd shift which was from 3 p.m. until 11 p.m.

Interrogatory No. 2: *Identify in chronological order your immediate supervisor(s) from December 1, 1997 to the present.*

Answer to Interrogatory No. 2: Han True

Interrogatory No. 3: *Identify any person from whom you or your representatives have obtained a written or recorded statement.*

Answer to Interrogatory No. 3: I have not received any such statement.

Interrogatory No. 4: *Identify any person who made any comments or statements or took any action which you contend was intended to or had the effect of* [Page 3] *discouraging any Barber Foods' employee from participating in this lawsuit, or in any way threatened, explicitly or implicitly, retaliation or repercussion if an employee participated; describe as well the substance of any such comment, statement, or action.*

Answer to Interrogatory No. 4: I have no knowledge of such comments or statements.

Interrogatory No. 5: *Identify any person who ever instructed or recommended, or told you that you were required, to arrive at work before the beginning of your scheduled shift; describe the substance of what you were told by each such person.*

Answer to Interrogatory No. 5: At orientation in December 1999, all new employees were told by Barber officials and Production line trainers to completely dress themselves before punching in upstairs. Trainers further defined the preliminary dressing procedure as follows: walk to the locker room, retrieve ear plugs and name tag from locker, stand in line for a shimmy coat and gloves, wait in another line for hairnets, rubber gloves and other supplies depending on the line I was scheduled to work, walk up the stairs and clock in to work on that particular line.

Interrogatory No. 6: *At any time after December 1, 1997, were you ever denied the opportunity to go to the bathroom during a shift? If so, how many times, when, and identify the person who refused permission.*

Answer to Interrogatory No. 6: I was not denied the opportunity to go to the bathroom during a shift; however, I had to wait until someone could cover my area before I could leave the line. I usually waited about 5 minutes after asking to go to the bathroom.

Interrogatory No. 7: *At any time after December 1, 1997, were you ever required to visit the medical office during your unpaid break? If so, how many times, when, and identify the person who required you to visit the office during this time.*

Answer to Interrogatory No. 7: Yes. I was told to go to the medical office for my physical examination when

I started at Barber in December 1999. My visit lasted one hour and I was not paid.

Interrogatory No. 8: *For all job positions held by you after December 1, 1997, state all sanitary, safety or protective clothing, equipment, or gear which you were required to wear.*

Answer to Interrogatory No. 8: [Page 4] I was required to wear a coat, rubber gloves, ear plugs, a hairnet, safety glasses when working close to machinery, safety belt and netted material over my shoes when working in the Cook Room (where food was cooked, frozen, packaged and sent out in one room).

Interrogatory No. 9: *For all job positions held by you after December 1, 1997, state all sanitary safety, or protective clothing, equipment, or gear which was optional and which you chose to wear.*

Answer to Interrogatory No. 9: I chose to wear the items listed in Interrogatory No. 8.

Interrogatory No. 10: *At any time after December 1, 1997, did you have a locker at Barber Foods? If so, state:*

c. Which clothing, equipment, or gear did you generally store in your locker;

d. Which clothing, equipment, or gear did you generally bring home with you.

Answer to Interrogatory No. 10:

a. Yes, I kept my ear plugs, name tag and safety belt in my locker.

b. No, I did not take equipment home with me.

Interrogatory No. 11: *Describe specifically all work performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 11: At the beginning of my shift before I was allowed to clock in, I walked to my locker, retrieved ear plugs and name tag from my locker, stood in line for a shimmy coat and gloves, waited in another line for hairnets, rubber gloves and other supplies depending on the line I was scheduled to work, walked up the stairs and clocked in to work on a production line. This entire process took about 15 minutes, sometimes longer if the lines were long.

Interrogatory No. 12: *Describe specifically all work performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 12: When I was required to work in the Cook Room, I had to undress and re-dress in [Page 5] all new gear. Managers required all new gear when entering the Cook Room. The process to undress took 5-10 minutes and it took approximately 10-15 minutes to re-dress depending on the length of the line. Also, at a managers request, I was required to punch out of one line and punch in on another line. This process took 2-5 minutes and I was not paid for any time I spent on the floor walking from one production line to another at the request of a manager.

Interrogatory No. 13: *Describe specifically all work performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 13: I had to undress and put all of the gear in different bins so that it could be thrown away or laundered. This process took 10 minutes each shift.

Interrogatory No. 14: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 14: The total amount of uncompensated time for work performed before clocking in at the beginning of my shift is 31 hours and 25 minutes.

25 weeks (12/20/99-6/9/01) x 3 shifts per week=75 shifts
75 shifts x 15 minutes at the beginning of each shift= 1,125 minutes or 18 hours and 45 minutes

Interrogatory No. 15: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 15: The total amount of uncompensated time for work performed during my work day is 25 hours.

Cook Room:
25 weeks (12/20/99-6/9/01) x 2 shifts per week=50
50 shifts x 25 minutes (10 min. to undress and 15

min. to re-dress)=1,250 minutes

Line change: [Page 6]
25 weeks x 5 shifts per week=125 shifts
125 shifts x 2 minutes per shift=250 minutes
TOTAL: 1500 minutes or 25 hours

Interrogatory No. 16: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 16: The total amount of uncompensated time for work performed after clocking out at the end of my scheduled shift is 4 hours and 15 minutes.

25 weeks x 5 shifts per week=125 shifts
125 shifts x 10 minutes= 250 minutes or 4 hours and 15 minutes

Interrogatory No. 17: *From December 11, 1997 to the present, state specifically by date and amount of minutes and/or hours each date, all uncompensated time spent visiting the medical office for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 17: I was not compensated for a visit to the medical office for one hour in December 1999.

[Page 7] I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11-29-01, 2001

Robert Humtley

*Handwriting omitted.

Exhibit 24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ABDELA TUM, et al.	)	
	)	
vs.	)	**Case No. 00-371-P-C**
	)	
BARBER FOODS, INC., d/b/a BARBER FOODS,	)	
	)	
Defendant.	)	

PLAINTIFF KENNETH LAMARCHE'S ANSWERS TO DEFENDANT BARBER FOODS' INTERROGATORIES

COMES NOW Plaintiff Kenneth LaMarche, objects and responds to the Defendant's Interrogatories as follows:

GENERAL OBJECTIONS

4. The Plaintiff objects to the definitions and instructions accompanying these interrogatories to the extent that they seek to impose burdens, duties and obligations upon the Plaintiff in excess of or different from those imposed by applicable law and the Federal Rules of Civil Procedure; Plaintiff will respond in accordance with said law and rules.

2. The Plaintiff objects to these interrogatories to the extent that they are overly burdensome and seek information regarding matters about which the Defendant, Barber Foods, has knowledge.

3. The Plaintiff objects to these interrogatories to the extent they seek to discover "core" work product, including the disclosure of the mental impressions, conclusions, opinions, and/or legal theories of attorneys or other representatives of the Plaintiff.

4. The Plaintiff objects to these interrogatories and document requests to the extent they seek information protected by the attorney-client privilege or any other applicable privilege.

5. The Plaintiff objects to these interrogatories and document requests to the extent that the information sought, if any, was obtained and prepared in anticipation of litigation and the Defendant has not made the required showing of substantial need for the information or that the substantial equivalent of such information is unobtainable by other means. The Plaintiff further objects to these interrogatories to the extent that the information called for, if any, is privileged and is not discoverable under Fed. R. Civ. P. [Page 2] Rule 26(b)(3) and *Hickman v. Taylor*, 329 U.S. 495 (1947).

6. The Plaintiff objects to these interrogatories to the extent that they seek to require the Plaintiff's attorneys to divulge the substance of information developed by them, including the subject matter of each discussion with Plaintiff's counsel (*i.e.*, interpretive, not investigatory) in preparation for the trial of this action.

7. The Plaintiff objects to these interrogatories to the extent that they are oppressive, i.e., they were designed to create an unreasonable burden on the Plaintiff, which burden is not commensurate with the professed result sought.

The Plaintiff answers the specific Interrogatories as follows:

Interrogatory No. 1: *State all job positions held by you at Barber Foods from December 1, 1997 to the present; include in your answer the shift on which you worked in each position.*

Answer to Interrogatory No. 1: Third shift sanitation worker; Second shift production worker.

Interrogatory No. 2: *Identify in chronological order your immediate supervisor(s) from December 1, 1997 to the present.*

Answer to Interrogatory No. 2: My supervisor on third shift sanitation was Keith. I do not remember Keith's last name. I don't remember the names of the supervisors on second shift.

Interrogatory No. 3: *Identify any person from whom you or your representatives have obtained a written or recorded statement.*

Answer to Interrogatory No. 3: None that I am aware of.

Interrogatory No. 4: *Identify any person who made any comments or statements or took any action which you contend was intended to or had the effect of discouraging any Barber Foods' employee from participating in this lawsuit, or in any way threatened, explicitly or implicitly, retaliation or repercussion if an employee participated; describe as well the substance of any such comment, statement, or action.*

Answer to Interrogatory No. 4: None that I can recall.

Interrogatory No. 5: *Identify any person who ever instructed or recommended, or told you that you were required, to arrive at work before the beginning of your scheduled shift; describe the substance of what you were told by each such person.*

Answer to Interrogatory No. 5: A supervisor told me to arrive at work between 20 [Page 3] minutes to 30 minutes before shift. I do not remember the supervisor's name.

Interrogatory No. 6: *At any time after December 1, 1997, were you ever denied the opportunity to go to the bathroom during a shift? If so, how many times, when, and identify the person who refused permission.*

Answer to Interrogatory No. 6: Not that I can recall.

Interrogatory No. 7: *At any time after December 1, 1997, were you ever required to visit the medical office during your unpaid break? If so, how many times, when, and identify the person who required you to visit the office during this time.*

Answer to Interrogatory No. 7: Not that I can remember.

Interrogatory No. 8: *For all job positions held by you after December 1, 1997, state all sanitary, safety or protective clothing, equipment, or gear which you were required to wear.*

Answer to Interrogatory No. 8: White coat, rubber pants, rubber jacket, rubber boots, blue gloves, white cotton glove liner, sleeve cover, ear plugs, safety glasses,

bump hat, hair net, back belt, lock out-tag out equipment, and occasionally a purple apron.

Interrogatory No. 9: *For all job positions held by you after December 1, 1997, state all sanitary safety, or protective clothing, equipment, or gear which was optional and which you chose to wear.*

Answer to Interrogatory No. 9: None.

Interrogatory No. 10: *At any time after December 1, 1997, did you have a locker at Barber Foods? If so, state:*

e. Which clothing, equipment, or gear did you generally store in your locker;

f. Which clothing, equipment, or gear did you generally bring home with you.

Answer to Interrogatory No. 10:

a. Hat, boots, safety glasses, rubber jacket, rubber pants, rubber boots, lock out-tag out equipment.

b. Only when lockers were spray cleaned.

Interrogatory No. 11: *Describe specifically all work performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 11: Walking from building entrance to area where white coats are, getting two white coats, gloves, and glove liners, waiting to get white [Page 4] coat, gloves, and glove liners, walking to my locker, putting on my gear at my locker, walking to the cafeteria to punch in.

Interrogatory No. 12: *Describe specifically all work performed by you between clocking in at the beginning*

of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.

Answer to Interrogatory No. 12: Typically I had to take some of my equipment and put it in my locker during breaks and lunch, and get the equipment from the locker and put it back on before the shift work resumed. Occasionally, when my equipment was drenched, I was allowed to go and get dry equipment during the shift.

Interrogatory No. 13: *Describe specifically all work performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be paid but were not paid for.*

Answer to Interrogatory No. 13: Walking downstairs towards the locker room, and taking off equipment, laundering equipment, throwing away equipment, storing equipment in my locker, and walking from my locker to the building exit.

Interrogatory No. 14: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you before clocking in at the beginning of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 14: It took me approximately 5 minutes to walk from the building entrance to the area where white coats and gloves are kept. Typically, there was no wait to get white jacket and gloves, but sometimes there was a 2-minute wait. It took approximately 2 minutes to walk to my locker. It took approximately 20 minutes to put all rain gear and other gear on at my locker. It

took approximately another 3 minutes to walk to cafeteria to punch in.

It took me approximately 5 minutes less when I worked on second shift, because I did not have to wear rubber jacket, pants, or boots.

Interrogatory No. 15: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you between clocking in at the beginning of your scheduled shift and clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 15: During lunch, I took off my rubber jacket, rubber pants, gloves, glove liners, and white coat and put them in my locker, which took about 5 minutes. It took approximately 5 minutes to put this equipment back on before resuming my shift work. During the shorter breaks, I would go downstairs and take off some of my equipment. The changing time during my breaks was approximately 2-3 [Page 5] minutes less when I worked on second shift. Approximately 5 times, I was completely denied a break.

Interrogatory No. 16: *From December 11, 1997 to the present, state specifically, by date and amount of minutes and/or hours each date, all uncompensated work time performed by you after clocking out at the end of your scheduled shift for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 16: After punch out, it would take approximately 5 minutes to go downstairs and take off gloves, liners, and rain jacket, and white coat, and disposing of the white coat, gloves, and glove liners. I spent approximately 20 minutes walking to my locker, taking off

the remaining gear and storing gear in my locker. It took approximately 5 minutes to walk from my locker to building exit.

It took me approximately 5 minutes less between punch out and leaving the building when I worked on second shift, because I did not have to wear rubber jacket, pants, or boots.

Interrogatory No. 17: *From December 11, 1997 to the present, state specifically by date and amount of minutes and/or hours each date, all uncompensated time spent visiting the medical office for which you claim you were entitled to be compensated.*

Answer to Interrogatory No. 17: None.

[Page 6] I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11/3, 2001

_____
Kenneth LaMarche.

**Handwriting omitted.*